

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS/(1) SENTENCES AND ORDERS AVAILABLE/1. Forms of sentence.

SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)

1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS

(1) SENTENCES AND ORDERS AVAILABLE

1. Forms of sentence.

The sentences which may be passed by a court¹ are:

- 1 (1) imprisonment² including imprisonment for public protection and for an extended term³;
- 2 (2) a custody plus order⁴;
- 3 (3) an intermittent custody order⁵;
- 4 (4) a suspended sentence order⁶;
- 5 (5) a community sentence⁷;
- 6 (6) a fine⁸;
- 7 (7) a binding over⁹;
- 8 (8) an absolute or conditional discharge¹⁰;
- 9 (9) custody for life¹¹;
- 10 (10) detention during Her Majesty's pleasure¹²;
- 11 (11) detention in a young offender institution¹³; and
- 12 (12) a detention and training order¹⁴.

1 In the principal legislation governing the sentencing of offenders (ie the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 Pt 12 (ss 142-305)) 'court' does not generally include the Court Martial: see the Powers of Criminal Courts (Sentencing) Act 2000 s 163(1) (amended by the Armed Forces Act 2006 Sch 16 para 168, though not so as to affect the substance of the definition) and the Criminal Justice Act 2003 s 305(1) (amended by the Armed Forces Act 2006 Sch 16 para 231, so as to enable a contrary intention to be expressed in the Armed Forces Act 2006).

2 See PARA 29 et seq. As to the powers of magistrates' courts to impose sentences of imprisonment see PARA 6.

3 As to sentences of imprisonment for public protection and extended sentences see PARAS 67-77, 82-84.

4 As to custody plus orders see PARAS 98-109.

5 As to intermittent custody orders see PARAS 100-109.

6 As to suspended sentence orders see PARAS 110-138.

7 As to community sentences see PARAS 163-167 (community sentences generally), PARAS 168-194 (community orders), PARAS 229-269 (youth community orders) and PARAS 202-228 (youth rehabilitation orders).

8 See PARA 139 et seq. Provision is also made for the issuing of on the spot penalties and fixed penalties: see PARA 150.

9 See PARA 151 et seq.

10 See PARA 40 et seq.

11 See PARAS 79-80.

12 See PARA 81.

13 See PARAS 85-88.

14 See PARAS 89-95.

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2. Orders in addition to or in lieu of sentence.

There are a number of orders at the courts¹ disposal which may be passed, in addition to or in lieu of sentence², for the purpose of preventing reoffending, making restitution to victims, or retrieving the proceeds of crime.

The preventive orders are:

- 13 (1) anti-social behaviour orders³;
- 14 (2) binding over parents and guardians⁴;
- 15 (3) driving disqualification⁵;
- 16 (4) directors' disqualification⁶;
- 17 (5) disqualification from working with children⁷;
- 18 (6) exclusion orders and drinking banning orders⁸;
- 19 (7) football banning orders⁹;
- 20 (8) hospital and guardianship orders¹⁰;
- 21 (9) parenting orders¹¹;
- 22 (10) referral orders¹²;
- 23 (11) restraining orders¹³;
- 24 (12) serious crime prevention orders¹⁴;
- 25 (13) sexual offences prevention orders¹⁵;
- 26 (14) supervision orders¹⁶; and
- 27 (15) travel restriction orders¹⁷.

The restitutionary orders are:

- 28 (a) compensation orders¹⁸;
- 29 (b) orders that parents of young offenders pay fines, surcharges, costs or compensation¹⁹;
- 30 (c) reparation orders²⁰; and
- 31 (d) restitution orders²¹.

The orders for retrieving the proceeds of crime are:

- 32 (i) confiscation orders²²;
- 33 (ii) financial reporting orders²³; and
- 34 (iii) orders for forfeiture and disposal²⁴.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the sentences which may be passed see PARA 1.

3 See PARAS 304-311. Anti-social behaviour orders may also be made otherwise than on conviction: see PARAS 496-505.

4 See PARA 312.

5 See PARAS 313-314.

- 6 See PARA 315.
- 7 See PARA 316.
- 8 See PARAS 317-325. Drinking banning orders may also be made otherwise than on conviction: see PARAS 526-529.
- 9 See PARAS 326-331. Football banning orders may also be made otherwise than on conviction: see PARAS 530-533.
- 10 See PARAS 332-342.
- 11 See PARA 343.
- 12 See PARAS 344-348.
- 13 See PARA 349.
- 14 See PARAS 350-359. Serious crime prevention orders may also be made otherwise than on conviction: see PARA 599.
- 15 See PARAS 360-367. Sexual offences prevention orders may also be made otherwise than on conviction: see PARAS 600-603.
- 16 See PARAS 368-370.
- 17 See PARAS 371-374.
- 18 See PARAS 375-382.
- 19 See PARA 383.
- 20 See PARAS 384-387.
- 21 See PARAS 388-389.
- 22 See PARA 390 et seq.
- 23 See PARAS 475-479.
- 24 See PARAS 480-495.

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3. Quasi-sentences.

In addition to the sentences which may be passed¹ and the orders which may be made in addition to or in lieu of sentence² there are a number of further orders which may be made and requirements which may be imposed on offenders otherwise than by a court³ on conviction, as follows:

- 35 (1) anti-social behaviour orders (made otherwise than on conviction)⁴;
- 36 (2) control orders⁵;
- 37 (3) drinking banning orders (made otherwise than on conviction)⁶;
- 38 (4) football banning orders (made otherwise than on conviction)⁷;
- 39 (5) foreign travel orders⁸;
- 40 (6) orders for the forfeiture of terrorist cash⁹;
- 41 (7) freezing orders¹⁰;
- 42 (8) injunctions for the prevention of gang-related violence¹¹;
- 43 (9) orders imposing notification requirements on sex offenders¹²;
- 44 (10) orders imposing notification requirements in respect of terrorism offences¹³;
- 45 (11) risk of sexual harm orders¹⁴;
- 46 (12) serious crime prevention orders (made otherwise than on conviction)¹⁵;
- 47 (13) sexual offences prevention orders (made otherwise than on conviction)¹⁶;
- and
- 48 (14) violent offender orders¹⁷.

1 As to the sentences which may be passed see PARA 1.

2 As to the orders which may be made in addition to or in lieu of sentence see PARA 2.

3 As to the meaning of 'court' see PARA 1 note 1.

4 See PARAS 496-505. Anti-social behaviour orders may also be made on conviction: see PARAS 304-311.

5 See PARAS 506-525.

6 See PARAS 526-529. Drinking banning orders may also be made on conviction: see PARAS 319-325.

7 See PARAS 530-533. Football banning orders may also be made on conviction: see PARAS 326-331.

8 See PARAS 534-540.

9 See PARAS 541-548.

10 See PARA 549.

11 See PARAS 550-556.

12 See PARAS 557-575.

13 See PARAS 576-590.

14 See PARAS 591-598.

15 See PARA 599. Serious crime prevention orders may also be made on conviction: see PARAS 350-359.

16 See PARAS 600-603. Sexual offences prevention orders may also be made on conviction: see PARAS 360-367.

17 PARAS 604-614.

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4. Abolition of death penalty, penal servitude and imprisonment with hard labour.

The death penalty for murder¹ in England and Wales was abolished in 1965², having previously been abolished for all murders other than capital murders³ or repeated murders⁴ in 1957⁵. Following its abolition for murder, the death penalty continued to be available for a number of offences against the state and several military offences for which it was abolished piecemeal⁶ until its final abolition for all purposes in 1998⁷. Former capital offences are now generally punishable by life imprisonment⁸.

The courts have no power to sentence a person to penal servitude or to imprisonment with hard labour, and every enactment conferring power on a court to pass a sentence of penal servitude or imprisonment with hard labour is to be construed as conferring power to pass a sentence of imprisonment for a similar term⁹.

1 The death penalty for murder was introduced by the Offences Against the Person Act 1861 s 1 (repealed).

2 See the Murder (Abolition of Death Penalty) Act 1965. That Act suspended the death penalty from the date of commencement (9 November 1965) until 31 July 1970 and was made permanent by Parliamentary resolution in 1969 (see ss 3(2), (4), 4 (ss 3(2), (4) repealed)).

3 See the Homicide Act 1957 s 5 (repealed), excluding from abolition murders done in the course or furtherance of theft or other violent offences or resisting arrest, and murders of police or prison officers.

4 See the Homicide Act 1957 s 6 (repealed), excluding from abolition multiple murders done on different occasions.

5 See the Homicide Act 1957 s 7 (repealed).

6 See eg the Dockyards etc Protection Act 1772, which imposed the death penalty for the offence of setting on fire ships, materials, stores or ammunition and was abolished in 1971 by the Criminal Justice Act 1971 Schedule Pt III.

7 See the Crime and Disorder Act 1998 s 36.

8 See eg the Murder (Abolition of Death Penalty) Act 1965 s 1(1), (3); the Treason Act 1814 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 90, 363 et seq.

9 Criminal Justice Act 1948 s 1(1), (2).

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5. Sentencing powers of Crown Court.

Almost all available forms of sentence¹ may be passed by the Crown Court. Any court² by or before which a child or young person (that is to say, any person aged under 18)³ is found guilty of an offence other than homicide⁴ may, and if it is not a youth court⁵ must, unless satisfied that it would be undesirable to do so⁶, remit the case:

- 49 (1) if the offender was committed or sent⁷ to the Crown Court for trial, to a youth court acting for the place where he was committed or sent to the Crown Court for trial⁸; or
- 50 (2) in any other case, to a youth court acting either for the same place as the remitting court or for the place where the offender habitually resides⁹.

Where any such case is so remitted, the offender must be brought before a youth court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court¹⁰.

Certain forms of sentence are available only in the cases of offenders of specified ages, or are subject to restrictions upon their use in relation to offenders within specified limits of age¹¹.

Where no express provision is made¹² that an increase in maximum penalty for an offence, or a new type of penalty, will apply only to an offence committed on or after the commencement date of the maximum or new power, the statute must be interpreted¹³ so that the increased maximum or new penalty does not apply to an offence committed before that increase or power came into force¹⁴. Where a maximum penalty is reduced between the time of commission of the offence and the date of sentence, the reduced maximum normally applies¹⁵.

1 As to forms of sentence see PARA 1. There are some limited exceptions to the Crown Court's powers: it may not, for example, make a referral order under the Powers of Criminal Courts (Sentencing) Act 2000 s 16(1) (see PARA 344).

2 As to the meaning of 'court' see PARA 1 note 1.

3 'Child' means a person under the age of 14; and 'young person' means a person aged at least 14 but under 18: Powers of Criminal Courts (Sentencing) Act 2000 s 163.

4 An offence under the Domestic Violence, Crime and Victims Act 2004 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 107) is an offence of homicide for these purposes: s 6(5).

5 As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

6 For guidelines as to the circumstances in which it might be undesirable to exercise the power to remit see *R v Lewis* (1984) 79 Cr App Rep 94, 6 Cr App Rep (S) 44, CA. The discretion of a magistrates' court is restricted by the Powers of Criminal Courts (Sentencing) Act 2000 s 8(6), (7), (8): see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1259.

7 I.e. under the Crime and Disorder Act 1998 s 51 or s 51A: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1132, 1133; and **MAGISTRATES** vol 29(2) (Reissue) PARA 654.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 8(1), (2)(a) (s 8(2)(a) substituted by the Criminal Justice Act 2003 Sch 3 para 74(1), (2)). As to the situation where a case is so remitted to a youth court see the Powers of Criminal Courts (Sentencing) Act 2000 s 8(3), (4); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1259.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 8(2)(b).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 8(3).

11 See PARAS 11-12.

12 Ie by the statute itself or by a relevant commencement order.

13 Ie by virtue of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), art 7(1) ('a heavier penalty [may not be] imposed than the one which was applicable at the time the criminal offence was committed': see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 148). Case law decided prior to the enactment of the Human Rights Act 1998 is consistent with this: see *Re Barretto* [1994] QB 392, 99 Cr App Rep 105, CA; *A-G's Reference (No 48 of 1994) (R v Jeffrey)* (1995) 16 Cr App Rep (S) 980 [1995] Crim LR 515, CA. Not every type of sentence is a penalty for the purposes of the European Convention on Human Rights art 7: as to whether or not a sentence is a penalty see *Welch v United Kingdom (Application 17440/90)* (1995) 20 EHRR 247, ECtHR; *R v Field* [2002] EWCA Crim 2913, [2003] 3 All ER 769, [2003] 2 Cr App Rep (S) 175; *R v B* [2009] EWCA Crim 906, [2009] All ER (D) 60 (May); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq. The fact that an offender receives a harsher sentence than that which he was liable to receive at the time of the offence because he has attained a 'threshold age' for a higher sentence at the time of conviction does not breach the European Convention on Human Rights art 7: *Taylor v United Kingdom (Application 48864/99)* (2003) 36 EHRR CD 104, ECtHR. See also *R (on the application of Uttley) v Secretary of State for the Home Department* [2004] UKHL 38, [2004] 4 All ER 1, [2005] 1 Cr App Rep (S) 500.

14 As to the situation where the offence is charged as having been committed during a period which straddles the coming into force of an increase in sentence see *R v S (Jason Orlando)* (1992) 13 Cr App Rep (S) 306, [1992] Crim LR 219, CA; *R v B (Carl)* (1993) 14 Cr App Rep (S) 774, [1993] Crim LR 541, CA; *R v Hobbs* [2002] EWCA Crim 387, [2002] 2 Cr App Rep 324; *R v Harries* [2007] EWCA Crim 1622, [2008] 1 Cr App Rep (S) 255, [2007] Crim LR 820.

15 *R v Shaw* [1996] 2 Cr App Rep (S) 278, [1996] Crim LR 349, CA.

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6. Sentencing powers of magistrates' court.

The maximum fine which may be imposed by a magistrates' court¹ on convicting an offender of an either way offence is the prescribed sum; and the maximum fine on conviction for a summary offence is normally taken from the standard scale². The minimum and maximum terms of imprisonment or detention which may be imposed by a magistrates' court are to be found in the enactment creating the offence, subject to the provisions described below³.

Until a day to be appointed⁴ a magistrates' court does not have power to impose imprisonment⁵ or detention in a young offender institution⁶ for more than six months in respect of any one offence⁷, and unless expressly excluded, this restriction applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than six months⁸. However, any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine⁹, or for want of sufficient distress (or, as from a day to be appointed, goods) to satisfy a fine, is not limited¹⁰ to six months¹¹.

Until a day to be appointed¹², on summary conviction in the magistrates' court of any of the listed offences triable either way¹³ a person is liable to imprisonment for a term not exceeding six months or to a fine¹⁴ not exceeding the prescribed sum or both¹⁵; as from that day the maximum term of imprisonment under this provision is increased to 12 months¹⁶. For any other offence triable either way¹⁷, being an offence under a relevant enactment¹⁸, the maximum fine which may be imposed on summary conviction is the prescribed sum unless the offence is one for which by virtue of another enactment¹⁹ a larger fine may be imposed on summary conviction²⁰.

Where a magistrates' court imposes imprisonment or detention for two or more offences, the court may make the terms concurrent or consecutive with an aggregate maximum (excluding a suspended sentence) of 12 months for two or more offences triable either way and six months for other offences²¹.

Where any person disobeys an order of a magistrates' court made under any Act²² to do anything other than the payment of money, or to abstain from doing anything, he is punishable in the manner prescribed by statute, or if no punishment is prescribed, he may be ordered to pay a sum²³ for every day during which he is in default or a sum not exceeding a prescribed maximum²⁴, or he may be committed to custody²⁵ until he has remedied his default or for a period not exceeding two months²⁶. These powers may be exercised either of the magistrates' court own motion or by order on complaint²⁷.

A magistrates' court must not impose imprisonment for less than five days²⁸.

Magistrates' courts like Crown Courts have the power to remit cases involving children and young persons to youth courts for sentence²⁹.

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 As to the statutory maximum, the prescribed sum and the standard scale see PARAS 140-142. Exceptional provisions are made for certain offences, both either way and summary.

3 See the text and notes 3-28.

4 The Powers of Criminal Courts (Sentencing) Act 2000 s 78 (see the text and notes 5-11) is prospectively repealed by the Criminal Justice Act 2003 Sch 37 Pt 7. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

5 For these purposes 'impose imprisonment' means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money or for failure to do or abstain from doing anything required to be done or left undone: Powers of Criminal Courts (Sentencing) Act 2000 s 78(6) (prospectively repealed: see note 4). Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 to an 'offence punishable with imprisonment' is to be construed without regard to any prohibition or restriction imposed by or under the Powers of Criminal Courts (Sentencing) Act 2000 or any Act on the imprisonment of young offenders: s 164(2).

In the event of the magistrates' court deciding against the defendant, it has power to commit him to prison in all cases in which the statute giving occasion for the information or complaint authorises imprisonment, either in the first instance or in default of his doing any act (see eg the Magistrates' Courts Act 1980 s 63(3); and **MAGISTRATES** vol 29(2) (Reissue) PARA 825) or paying any sum of money which the justices have ordered him to do or pay. As to enforcement of payment orders generally see **MAGISTRATES** vol 29(2) (Reissue) PARA 828 et seq.

6 As to detention in a young offender institution see PARAS 85-88.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 78(1) (prospectively repealed: see note 4). Section 78(1) is without prejudice to the Magistrates' Courts Act 1980 s 133 (consecutive terms of imprisonment: see PARA 35); Powers of Criminal Courts (Sentencing) Act 2000 s 78(3) (as so prospectively repealed).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 78(2) (prospectively repealed: see note 4).

9 For these purposes 'fine' includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation: Powers of Criminal Courts (Sentencing) Act 2000 s 78(5) (prospectively repealed: see note 4). As to imprisonment for non-payment of fines see **MAGISTRATES** vol 29(2) (Reissue) PARA 860 et seq.

10 Ie by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 78(1): see the text and notes 4-7.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 78(4) (prospectively repealed (see note 4); s 78(4) prospectively amended, and s 78(4A) prospectively added, by the Tribunals, Courts and Enforcement Act 2007 Sch 13 paras 131, 132). At the date at which this volume states the law no day had been appointed for the coming into force of these amendments. As from a day to be appointed the reference in the Powers of Criminal Courts (Sentencing) Act 2000 s 78(4) to 'want of sufficient goods to satisfy a fine' is a reference to circumstances where there is power to use the procedure in the Tribunals, Courts and Enforcement Act 2007 Sch 12 to recover the fine from a person but it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by Sch 12 para 50(3)): Powers of Criminal Courts (Sentencing) Act 2000 s 78(4A) (as so prospectively added).

12 The Magistrates' Courts Act 1980 s 32(1) (see the text and notes 15-16) is prospectively amended by the Criminal Justice Act 2003 s 282. At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

13 Ie the offences listed in the Magistrates' Courts Act 1980 Sch 1: see **MAGISTRATES** vol 29(2) (Reissue) PARA 655. As to the meaning of 'offence triable either way' see **MAGISTRATES** vol 29(2) (Reissue) PARA 653. A magistrates' court does not have power to impose imprisonment for an offence listed in Sch 1 if the Crown Court would not have that power in the case of an adult convicted on indictment: s 32(1) proviso (a).

14 'Fine' includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation: Magistrates' Courts Act 1980 s 32(9).

15 Magistrates' Courts Act 1980 s 32(1) (prospectively amended: see note 12). Section 32 extends, subject to modifications, to the Isle of Man and to Guernsey: see the Criminal Justice Act 1982 (Isle of Man) Order 1983, SI 1983/1898; and the Criminal Justice Act 1982 (Guernsey) Order 1992, SI 1992/3202.

16 Magistrates' Courts Act 1980 s 32(1) (prospectively amended: see note 12).

17 Ie which is not listed in the Magistrates' Courts Act 1980 Sch 1: see **MAGISTRATES** vol 29(2) (Reissue) PARA 655. This provision (ie s 32(2): see the text and note 20) does not apply on summary conviction of:

- 1 (1) offences under the Misuse of Drugs Act 1971 s 5(2) (having possession of a controlled drug) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug (Magistrates' Courts Act 1980 s 32(5)(a));

- 2 (2) offences under the following provisions of the Misuse of Drugs Act 1971, where the controlled drug in relation to which the offence was committed was a Class C drug (Magistrates' Courts Act 1980 s 32(5)(b)):
1. (a) s 4(2) (production, or being concerned in the production, of a controlled drug) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772);
1
2. (b) s 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772);
2
3. (c) s 5(3) (having possession of a controlled drug with intent to supply it to another) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772);
3
4. (d) s 8 (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 777);
4
5. (e) s 12(6) (contravention of direction prohibiting practitioner etc from possessing, supplying etc controlled drugs) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 272); or
5
6. (f) s 13(3) (contravention of direction prohibiting practitioner etc from prescribing, supplying etc controlled drugs) (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 273).
6

For these purposes 'controlled drug', 'Class B drug' and 'Class C drug' have the same meanings as in the Misuse of Drugs Act 1971 s 2(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770; **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 238): Magistrates' Courts Act 1980 s 32(8).

18 'Relevant enactment' means an enactment contained in the Criminal Law Act 1977 or in an Act passed before or in the same session as that Act: Magistrates' Courts Act 1980 s 32(9).

19 Ie otherwise than by virtue of the Magistrates' Courts Act 1980 s 32(2).

20 Magistrates' Courts Act 1980 s 32(2). Where by virtue of any relevant enactment a person summarily convicted of an offence triable either way would, apart from s 32, be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a second or subsequent conviction, s 32(2) applies irrespective of whether the conviction is a first, second or subsequent one: s 32(3). Section 32(2) does not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event: s 32(4).

Where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence: (1) s 32(2) does not affect that power or override any restriction imposed in the exercise of that power (s 32(6)(a)); and (2) the amount to which that fine may be restricted in the exercise of that power is any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed (s 32(6)(b)).

21 See the Magistrates' Courts Act 1980 s 133; and PARA 35.

22 Ie any Act passed after 31 December 1879 (the commencement of the Summary Jurisdiction Act 1879 (repealed)).

23 Ie a sum not exceeding £50: Magistrates' Courts Act 1980 s 63(3)(a).

24 Magistrates' Courts Act 1980 s 63(3)(a), (5). The prescribed maximum referred to in the text is £5,000: s 63(3)(a) (amended by the Criminal Justice Act 1991 Sch 4 Pt I). A person who is ordered to pay a sum for every day during which he is in default must not by virtue of the Magistrates' Courts Act 1980 s 63 be ordered to pay more than £1,000 for doing or abstaining from doing the same thing contrary to the order: s 63(3). This is without prejudice to the operation of s 63 in relation to any subsequent default: s 63(3). Any sum ordered to be paid under s 63(3) is, for the purposes of the Magistrates' Courts Act 1980, treated as adjudged to be paid by a conviction of a magistrates' court: s 63(4).

25 If under the Magistrates' Courts Act 1980 s 63(3) a magistrates' court has power to commit a person to custody for breach of an occupation order (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 289)

or a non-molestation order (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 73 (2009) PARA 716), an exclusion requirement included by virtue of the Children Act 1989 s 38A (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 290) in an interim care order made under s 38 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 288 et seq), or an exclusion requirement included by virtue of s 44A (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 587) in an emergency protection order under s 44 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 583 et seq), the court may by order direct that the execution of the order of committal is to be suspended for such period or on such terms and conditions as it may specify: Family Law Act 1996 s 50.

26 Magistrates' Courts Act 1980 s 63(3)(b), (5). A person who is committed to custody until he has remedied his default must not by virtue of s 63 be committed for more than two months in all for doing or abstaining from doing the same thing contrary to the order: s 63(3). This is without prejudice to the operation of s 63 in relation to any subsequent default: s 63(3). Appeal against an order or decision under s 63(3) lies to the High Court: see the Administration of Justice Act 1960 s 13(5)(c); and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 512.

Where a parent in whose favour there was a custody order failed to comply with an access order, it was held that the parent could be committed to prison for failing to comply with the access order: see *Re K (A Minor)* [1977] 2 All ER 737, [1977] 1 WLR 533n, DC. However, before a breach of an order for access could be punished under the Magistrates' Courts Act 1980 s 63(3) it had to be shown that the breach was deliberate: *P v W (Access Order: Breach)* [1984] Fam 32, sub nom *P v W* [1984] 1 All ER 866, DC. Access and custody orders were replaced with contact and residence orders by the Children Act 1989: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 251, 262.

27 See the Contempt of Court Act 1981 s 17(1); and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 478.

28 See the Magistrates' Courts Act 1980 s 132; and PARA 31.

29 See the Powers of Criminal Courts (Sentencing) Act 2000 s 8; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1259.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS/(1) SENTENCES AND ORDERS AVAILABLE/7. Magistrates' powers of detention for short periods.

7. Magistrates' powers of detention for short periods.

A magistrates' court¹ that has power to commit to prison a person convicted of an offence, or would have that power but for the statutory provisions relating to the restrictions on the power to impose imprisonment for default² or the supervision of pending payments³, may order him to be detained within the precincts of the courthouse or at any police station until such hour, not later than 8 o'clock in the evening of the day on which the order is made⁴, as the court may direct, and, if it does so, must not, where it has power to commit him to prison, exercise that power⁵.

A magistrates' court that has power to commit to prison a person in default of payment of a sum adjudged to be paid by a summary conviction, or would have that power but for the statutory provisions relating to the restrictions on the power to impose imprisonment for default⁶ or the supervision of pending payments⁷ may issue a warrant for his detention in a police station, and, if it does so, must not, where it has power to commit him to prison, exercise that power⁸. A warrant under these provisions authorises the person executing it to arrest the defaulter and take him to a police station⁹, and requires the officer in charge of the station to detain him there until 8 o'clock in the morning of the day following that on which he is arrested, or, if he is arrested between midnight and 8 o'clock in the morning, until 8 o'clock in the morning of the day on which he is arrested¹⁰. The officer may release the defaulter at any time within four hours before 8 o'clock in the morning if the officer thinks it expedient to do so in order to enable him to go to his work or for any other reason appearing to the officer to be sufficient¹¹.

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 Ie but for the Magistrates' Courts Act 1980 s 82: see PARA 8; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 854, 862.

3 Ie but for the Magistrates' Courts Act 1980 s 88: see **MAGISTRATES** vol 29(2) (Reissue) PARA 874.

4 A court must not make an order under these provisions which will deprive the offender of a reasonable opportunity of returning to his abode on the day of the order: Magistrates' Courts Act 1980 s 135(2). See note 5.

5 Magistrates' Courts Act 1980 s 135(1). Until a day to be appointed s 135 has effect in relation to a person aged 18 or over but less than 21 as if references in it to prison were references to detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (detention of persons aged 18 to 20 for default: see PARA 11): Magistrates' Courts Act 1980 s 135(3) (added by the Criminal Justice Act 1982 Sch 14 para 58; amended by the Criminal Justice Act 1991 Sch 8 para 6; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 77; prospectively repealed by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 58, 67, Sch 8). At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

6 Ie but for the Magistrates' Courts Act 1980 s 82: see PARA 8; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 854, 862.

7 Ie but for the Magistrates' Courts Act 1980 s 88: see **MAGISTRATES** vol 29(2) (Reissue) PARA 874.

8 Magistrates' Courts Act 1980 s 136(1). Until a day to be appointed, s 136 has effect in relation to a person aged 18 or over but less than 21 as if references in it to prison were references to detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (detention of persons aged 18 to 20 for default: see PARA 11): Magistrates' Courts Act 1980 s 136(4) (added by the Criminal Justice Act 1982 Sch 14 para 58; amended by the Criminal Justice Act 1991 Sch 8 para 6 and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 78; prospectively repealed by the Criminal Justice and Court Services Act 2000 Sch 7 Pt II paras 58, 68, Sch 8). At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

- 9 Magistrates' Courts Act 1980 s 136(2)(a) (substituted by the Access to Justice Act 1999). See note 8.
- 10 Magistrates' Courts Act 1980 s 136(2)(b). See note 8.
- 11 Magistrates' Courts Act 1980 s 136(3). See note 8.

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8. Restrictions on magistrates' powers of imprisonment for failure to pay fines.

On convicting an offender of an offence a magistrates' court¹ may not, in general, issue a warrant of commitment² for default in paying a sum adjudged to be paid unless the offender appears to have sufficient means to pay the sum forthwith, he is unlikely to remain in the United Kingdom for long enough to enable payment of the sum to be enforced by other methods, or the magistrates' court is sentencing him to immediate imprisonment or detention for that or another offence or he is already serving a sentence of custody for life, or a term of imprisonment or detention³. The maximum term for which a person may be committed to prison under a warrant of commitment for default in paying a sum adjudged to be paid by a conviction or order must not in general exceed the period applicable to the case⁴.

Where a magistrates' court would have power to commit to prison a person under the age of 18 for a default consisting in failure to pay or satisfy a sum adjudged to be paid by a conviction, the magistrates' court may make an order requiring the defaulter's parent or guardian to enter into a recognisance to ensure that the defaulter pays so much of that sum as remains unpaid or an order directing so much of that sum as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter⁵.

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 As to warrants of commitment see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1162; and as to the issue of warrants of commitment see **MAGISTRATES** vol 29(2) (Reissue) PARA 860 et seq. A magistrates' court must not, in advance of the issue of a warrant of commitment, fix a term of imprisonment which is to be served by an offender in the event of a default in paying a sum adjudged to be paid by a conviction, except where it has power to issue a warrant of commitment forthwith, but postpones issuing the warrant: see the Magistrates' Courts Act 1980 s 82(2); and **MAGISTRATES** vol 29(2) (Reissue) PARA 854.

3 See the Magistrates' Courts Act 1980 s 82(1); and **MAGISTRATES** vol 29(2) (Reissue) PARA 854.

4 See the Magistrates' Courts Act 1980 s 76(3); and **MAGISTRATES** vol 29(2) (Reissue) PARA 865.

5 See the Magistrates' Courts Act 1980 s 81; and **MAGISTRATES** vol 29(2) (Reissue) PARA 870.

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9. Deportation of foreign offenders.

A person who is not a British citizen¹ is liable to deportation from the United Kingdom² if, after he has attained the age of 17³, he is convicted of an offence for which he is punishable with imprisonment, and on his conviction he is recommended for deportation by a court empowered to do so⁴.

In considering whether to make a recommendation for deportation the court must first consider whether the offender's continued presence in the United Kingdom would be detrimental to the country⁵. A recommendation should be made only if there exists a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society⁶: the more serious the crime and the longer the criminal record, the more obvious it is that there should be such an order, although a minor offence would not merit one⁷. The proper approach is for the court first to deal with the offence charged on its merits and to determine the appropriate sentence before considering whether or not a recommendation for deportation is merited⁸.

The court is not concerned with the political system of the country to which the offender would be deported or whether, in consequence, deportation to that country would be unduly harsh⁹. It is also not for the court to consider the effect of deportation on the offender's family or his human rights¹⁰. There should, however, be a full inquiry into all the circumstances of the case and it is advisable that judges should invite counsel to address them specifically on the possibility of a recommendation being made¹¹.

1 As to British citizenship see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 23-43.

2 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 PARA 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

3 A person is deemed to have attained the age of 17 at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court: Immigration Act 1971 s 6(3)(a).

4 Immigration Act 1971 s 3(6) (amended by the British Nationality Act 1981 Sch 4 paras 2, 4). As to the meaning of 'court' see PARA 1 note 1. As to the conditions upon which a court may make a recommendation for deportation see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 160; as to persons against whom deportation orders may not be made see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 161; and as to exemptions from deportation for certain existing residents see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 162. A recommendation for deportation is treated as a sentence for the purpose of any enactment providing an appeal against sentence: see the Immigration Act 1971 s 6(5)(a); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 160. Provision is also made for the automatic deportation of foreign offenders: see the UK Borders Act 2007 ss 32-38; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

5 See *R v Caird* (1970) 54 Cr App Rep 499, CA; *R v Nazari* [1980] 3 All ER 880, 71 Cr App Rep 87, CA. The fact that a person is living on social security is not to the country's 'detriment' and should not be taken into account: *R v Serry* (1980) 2 Cr App Rep (S) 336, CA. For guidance about the exercise of the power to make a recommendation for deportation in the case of an offence relating to immigration status see *R v Ahemed* [2005] EWCA Crim 1954, [2005] Crim LR 974; *R v Benabbas* [2005] EWCA Crim 2113, [2005] Crim LR 976.

6 See Case 30/77 *R v Bouchereau* [1978] QB 732, 66 Cr App Rep 202, ECJ (recommendation to be made in accordance with the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd

5179) (the 'EC Treaty') art 39 (formerly art 48) and EC Council Directive 64/221 (repealed: see now EC Council Directive 2004/38 (OJ L229, 29.6.2004, p 35) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States)); *R v Kraus* (1982) 4 Cr App Rep (S) 113, CA; *R v Escauriaza* (1988) 87 Cr App Rep 344, 9 Cr App Rep (S) 542, CA; *R v Spura* (1988) 10 Cr App Rep (S) 376, CA. The possibility of re-offending is a very important factor in deciding whether to recommend deportation: *R v Secretary of State for the Home Department, ex p Santillo* [1981] QB 778, 73 Cr App Rep 71 at 785 and 77, CA per Donaldson LJ. In connection with the deportation of citizens of EU member states see also *R v Secretary of State for the Home Department, ex p Dannenberg* [1984] QB 766, [1984] 2 All ER 481, CA; *R v Compassi* (1987) 9 Cr App Rep (S) 270, CA.

7 *R v Nazari* [1980] 3 All ER 880, 71 Cr App Rep 87, CA.

8 *R v Edgehill* [1963] 1 QB 593, 47 Cr App Rep 41, CCA. A judge who recommends deportation in the course of sentencing must give his reasons for making such recommendation: *R v Nazari* [1980] 3 All ER 880, 71 Cr App Rep 87, CA; *R v Secretary of State for the Home Department, ex p Santillo* [1981] QB 778, 73 Cr App Rep 71, CA; *R v Compassi* (1987) 9 Cr App Rep (S) 270, [1987] Crim LR 716, CA; *R v Escauriaza* (1988) 87 Cr App Rep 344, 9 Cr App Rep (S) 542, CA; *R v Rodney* [1996] 2 Cr App Rep (S) 230, [1996] Crim LR 357, CA. See also PARAS 23-24. It is wrong to postpone passing sentence in order to see whether the Home Secretary will give effect to the recommendation: *R v Edgehill*. A recommendation for deportation may be made in conjunction with a conditional discharge: *R v Akan* [1973] QB 491, 56 Cr App Rep 716, CA.

9 *R v Caird* (1970) 54 Cr App Rep 499, CA; *R v Antypas* (1972) 57 Cr App Rep 207, CA; *R v Nazari* [1980] 3 All ER 880, 71 Cr App Rep 87, CA.

10 See *R v Carmona* [2006] EWCA Crim 508, [2006] 1 WLR 2264, [2006] 2 Cr App Rep (S) 662 (considering the effect of a recommendation for deportation on the offender's rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq). See also, however, *R v Nazari* [1980] 3 All ER 880, 71 Cr App Rep 87, CA (the court ought to take into consideration the effect a deportation order would have on innocent persons such as the offender's family).

11 *R v Antypas* (1972) 57 Cr App Rep 207, CA; *R v Nazari* [1980] 3 All ER 880, 71 Cr App Rep 87, CA. It is generally advisable, where otherwise appropriate, that a representation order be granted for this purpose: *R v Edgehill* [1963] 1 QB 593, 47 Cr App Rep 41, CCA.

UPDATE

9 Deportation of foreign offenders

NOTES 5-8--Where the offender was automatically liable to deportation under the UK Borders Act 2007 s 32, it was not necessary or appropriate for the court to recommend deportation as the Secretary of State was required to make a deportation order; in cases in which the offender was not so liable to deportation, it would rarely be appropriate for the court to recommend the offender's deportation: *R v Kluxen*; *R v Rostas* [2010] EWCA Crim 1081, [2010] All ER (D) 124 (May).

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(2) SENTENCING OF YOUNG OFFENDERS

10. Overriding objective.

Every court¹ in dealing with a child or young person² who is brought before it, either as an offender or otherwise, must have regard to the welfare of the child or young person and must in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training³. It is the principal aim of the youth justice system⁴ to prevent offending by children and young persons⁵, and it is the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim in addition to any other duty to which they are subject⁶. Local authorities are required to secure the provision of youth justice services in their area through the establishment of youth offending teams and the drawing-up of youth justice plans, and the Youth Justice Board has been established in order to oversee this process⁷.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the meanings of 'child' and 'young person' for the purposes of the Children and Young Persons Act 1933 see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 3.

3 See the Children and Young Persons Act 1933 s 44; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1232 et seq. See also the Criminal Justice Act 2003 s 142A; the Children Act 1989 s 1; PARA 616; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 300 et seq. As to the sentences and other orders which may be imposed on young offenders see PARAS 11, 12. As to ascertainment of age and the relevant date see PARA 27.

4 Ie the system of criminal justice in so far as it relates to children and young persons: Crime and Disorder Act 1998 s 42(1).

5 Crime and Disorder Act 1998 s 37(1). For the purposes of the Crime and Disorder Act 1998 'child' means a person under the age of 14 years and 'young person' means a person who has attained the age of 14 and is under the age of 18, and the age of a person is deemed to be that which it appears to the court to be after considering any available evidence: s 117(1), (3).

6 Crime and Disorder Act 1998 s 37(2). In carrying out any of their duties under s 37, a local authority, a police authority, a local probation board, a provider of probation services, a Strategic Health Authority, a Local Health Board or a Primary Care Trust must act in accordance with any guidance given by the Secretary of State: s 42(3) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 150, 151; the Offender Management Act 2007 Sch 3 para 3; SI 2000/90; SI 2002/2469). As to local authorities see **LOCAL GOVERNMENT**; as to police authorities see **POLICE**; as to health service bodies see **HEALTH SERVICES**; and as to local probation boards and providers of probation services see PARAS 733-760.

7 See the Crime and Disorder Act 1998 ss 38-42; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1702-1705.

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11. Custodial sentences which may be imposed in respect of young offenders.

In respect of offences committed before 30 November 2009¹ no court² may pass a sentence of imprisonment³ on a person under 21 years of age when convicted of an offence⁴ or commit such a person to prison for any reason⁵; in respect of offences committed on or after that date this restriction applies only in respect of a person aged under 18 years of age⁶.

A court must in specified cases order detention for life or for public protection for serious offences committed by dangerous offenders under 18 at the time of conviction⁷, or the extended detention of such offenders⁸. A court may order the detention of persons convicted of serious offences if they are under 18 at the time of conviction⁹. In addition, a court may, and sometimes must, make a detention and training order in respect of a young offender aged under 18, providing for a period of detention and training followed by a period of supervision¹⁰. Until a day to be appointed a court may, and sometimes must, sentence a person under 21 to custody for life in specified circumstances¹¹ and a person aged 18 or over but under 21 may be sentenced to detention in a young offender institution¹².

Detention during Her Majesty's pleasure may be imposed only if the offender had not attained the age of 18 years at the time of the offence¹³. Detention for specified serious offences, or a detention and training order, may be imposed only on offenders who have not attained 18 years of age at the date of conviction¹⁴. A sentence of detention in a young offender institution may be passed only if the offender has attained 18 years of age but not 21 years of age at the date of conviction¹⁵.

1 In respect of offences committed on or after 30 November 2009 these provisions (ie the Powers of Criminal Courts (Sentencing) Act 2000 s 89: see the text and notes 2-4) are applicable in relation to persons under 18 years of age (s 89(1)(a), (b), (2) amended, and s 108 repealed, by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 180, 188, Sch 8, subject to a saving in respect of offences committed before that date (see Sch 27 para 1)).

2 As to the meaning of 'court' see PARA 1 note 1.

3 In the Powers of Criminal Courts (Sentencing) Act 2000 'sentence of imprisonment' does not include a committal in default of payment of any sum of money, for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone; and references to 'sentencing an offender to imprisonment' are to be read accordingly: s 163.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 89(1)(a) (as amended: see note 1). Nothing in s 89(1) prevents the committal to prison of a person aged under 21 years of age (or, in respect of offences committed on or after 30 November 2009, under 18: see note 1) who is remanded in custody (s 89(2)(a) (as so amended)) or is committed in custody for sentence or (until a day to be appointed) trial (s 89(2)(b) (prospectively amended by the Criminal Justice Act 2003 Sch 3 para 74(1), (3), Sch 37 Pt 4)) or sent in custody for trial under the Crime and Disorder Act 1998 s 51 or s 51A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1132) (Powers of Criminal Courts (Sentencing) Act 2000 s 89(2)(c) (amended by the Criminal Justice Act 2003 Sch 3 para 74(1), (3), Sch 37 Pt 4)).

As to the determination of a person's age for these purposes see PARA 27. If there is a dispute about the offender's age, the best course may be to adjourn until the matter can be resolved in the light of further evidence: *R v Steed* (1990) 12 Cr App Rep (S) 230, [1990] Crim LR 816, CA. If on the available evidence an offender is deemed to be of the applicable age, and is dealt with on that basis, the fact he is subsequently found to be under that age does not invalidate the sentence: *R v Farndale* (1973) 58 Cr App Rep 336, CA; *R v Brown* (1989) 11 Cr App Rep (S) 263, [1989] Crim LR 750, CA. As to the matters to which the court must have

regard in these circumstances see also *R v Bowker* [2007] EWCA Crim 1608, [2008] 1 Cr App Rep (S) 412, [2007] Crim LR 904; and PARA 615.

It is an abuse of the power of adjournment to adjourn a case solely in order to wait for an offender to attain a particular age before which a particular form of sentence could not be imposed: *Arthur v Stringer* (1987) 84 Cr App Rep 361, 8 Cr App Rep (S) 329, DC. A person under the applicable age at the date of conviction but who attains that age between conviction and sentence should be sentenced as a person under the applicable age and not as an adult: *R v Danga* [1992] QB 476, 13 Cr App Rep (S) 408, CA. The base line for sentencing in such a case should be the sentence which the offender would be likely to have received if sentenced at the time of the offence; this can be departed from but only with good reason: *R v Ghafoor* [2002] EWCA Crim 1857, [2003] 1 Cr App Rep (S) 428, [2002] Crim LR 739 (applied in *R v LM* [2002] EWCA Crim 3047, [2003] 2 Cr App Rep (S) 124, [2003] Crim LR 205; *R v Jones (Martin)* [2003] EWCA Crim 1609, [2004] 1 Cr App Rep (S) 126, [2003] Crim LR 639). Contrast *R v H (Anthony)* [2002] EWCA Crim 2938, 167 JP 30, CA.

In respect of offences committed before 30 November 2009, in any case where, but for the Powers of Criminal Courts (Sentencing) Act 2000 s 89(1), a court would have power:

- 3 (1) to commit a person under 21 but not less than 18 years of age to prison for default in payment of a fine or any other sum of money (s 108(1)(a) (repealed: see note 1));
- 4 (2) to make an order fixing a term of imprisonment in the event of such a default by such a person (s 108(1)(b) (repealed)); or
- 5 (3) to commit such a person to prison for contempt of court or any kindred offence (s 108(1)(c) (repealed)),

the court has power to commit him to be detained or, as the case may be, to make an order fixing a term of detention in the event of default, for a term not exceeding the term of imprisonment; and, for these purposes, the power of a court to order a person to be imprisoned under the Attachment of Earnings Act 1971 s 23 (see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1465-1466) is to be taken to be a power to commit him to prison (Powers of Criminal Courts (Sentencing) Act 2000 s 108(2) (repealed)). No court may, however, commit such a person to be so detained unless it is of the opinion that no other method of dealing with him is appropriate; and in forming such an opinion the court must take into account all such information about the circumstances of the default or contempt (including any aggravating or mitigating factors) as is available to it (s 108(3)(a) (repealed)) and may take into account any information about the person which is before it (s 108(3)(b) (repealed)). Where a magistrates' court so commits a person to be detained it must state in open court the reason for its opinion that no other method of dealing with him is appropriate (s 108(4)(a) (repealed)) and cause that reason to be specified in the warrant of commitment and to be entered on the register (s 108(4)(b) (repealed)). 'Register' means the register of proceedings before a magistrates' court required by Criminal Procedure Rules to be kept by the designated officer for the court: s 163 (amended by SI 2001/618; SI 2004/2035; SI 2005/886). See *R v Grimsby Justices, ex p Hogg* (1994) 158 JP 1053, DC; *R v Byas* (1995) 159 JP 458, 16 Cr App Rep (S) 869, CA. As from a day to be appointed no court is to commit a person to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 or make an order thereunder fixing a term of detention (Criminal Justice and Court Services Act 2000 s 61(2) (not yet in force)), and a person aged under 21 who has been committed (before the coming into force of s 61) to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 or in respect of whom an order thereunder fixing a term of detention has been made (before the coming into force of the Criminal Justice and Court Services Act 2000 s 61) may be detained in a young offender institution, or in a prison, determined by the Secretary of State (s 61(4) (not yet in force)). A determination of the Secretary of State under s 61 may be made in respect of an individual or any description of individuals: s 61(6) (not yet in force).

A failure to obey an order to enter into a recognisance may not be dealt with as a contempt of court since it is not within the ambit of matters which can be dealt with as such a contempt before a magistrates' court; however, a refusal twice repeated in open court to enter into a recognisance to keep the peace is a 'kindred offence' to contempt of court: *Howley v Oxford* (1985) 81 Cr App Rep 246, [1985] Crim LR 724, DC.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 89(1)(b) (as amended: see note 1).

6 See note 1. As from a day to be appointed, a person who has been sentenced to imprisonment and is aged under 21 may be detained either in a prison or in a young offender institution in which there are detained either one or more persons aged at least 18 but under 21 who have been sentenced to a term of detention in a young offender institution, to custody for life or to a custodial order, or one or more persons aged under 21 who have been committed to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see note 4) or in respect of whom an order thereunder fixing a term of detention has been made, as determined by the Secretary of State: Criminal Justice and Courts Service Act 2000 s 61(5) (not yet in force). A determination of the Secretary of State under s 61 may be made in respect of an individual or any description of individuals: s 61(6) (not yet in force). At the date at which this volume states the law no day had been appointed for the commencement of s 61.

7 See PARA 82.

- 8 See PARA 84.
- 9 See PARA 78.
- 10 See PARA 89. As to the supervision of young offenders after release see **PRISONS** vol 36(2) (Reissue) PARA 628.
- 11 See PARAS 79-80.
- 12 See PARA 85.
- 13 See PARA 81.
- 14 As to the specified serious offences see PARA 78; as to detention and training orders see PARA 89 et seq.
- 15 See PARA 85.

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12. Other sentences and orders which may be imposed in respect of young offenders.

A fine¹, a compensation order², a binding over³, an absolute or conditional discharge⁴, and a hospital order⁵ with or without a restriction order⁶ are sentences which may be imposed whatever the offender's age. A guardianship order or a community order may not be made on an offender under 16 years of age⁷.

Curfew orders, exclusion orders, action plan orders, supervision orders and attendance centre orders (ie youth community orders) may be imposed on young offenders in respect of offences committed before 30 November 2009⁸: youth rehabilitation orders may be made in respect of young offenders committing offences after that date⁹.

There are a number of further orders in addition to or in lieu of sentence¹⁰, and a number of quasi-sentences¹¹, which the court may pass in respect of young offenders.

1 See PARAS 139, 383. As to ordering payment of such fines by parents or guardians see PARA 383. Courts may also order parents or guardians to enter into recognisances to take proper care of, and exercise proper control over, a child or young person: see the Powers of Criminal Courts (Sentencing) Act 2000 s 150; PARA 312; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288.

2 See PARA 375 et seq.

3 See PARAS 151 et seq, 675. As to recognisances by parents or guardians of children and young persons see PARAS 312, 675.

4 See PARA 40 et seq.

5 See PARAS 332-342.

6 See PARA 337.

7 As to guardianship orders see PARAS 332-333; and as to community orders see PARAS 163, 168-194.

8 As to curfew orders and exclusion orders see PARA 231 et seq; as to action plan orders see PARA 242 et seq; as to supervision orders see PARA 250 et seq; and as to attendance centre orders see PARA 267 et seq.

9 As to youth rehabilitation orders see PARA 202 et seq.

10 See PARA 2.

11 See PARA 3.

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(3) EXERCISE OF COURT'S POWERS

13. Proceedings after verdict on trial on indictment.

After arriving at a verdict on the trial of an indictment the court will be given details of any previous similar convictions of the offender¹, who should also be informed of any outstanding charges against him and asked whether he admits them and wishes them to be taken into consideration². If the trial judge has discretion as to sentence the court may then hear evidence from either the prosecution or the defence on the question of what punishment should be imposed, and the defendant may also address the court in mitigation³; the court will also consider any pre-sentence reports⁴. Provision is also made for the arrest or respite of judgment at any time up to sentencing⁵.

1 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1347. As to the consideration of antecedents see PARA 617.

2 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1348. As to the consideration of outstanding offences see PARA 630.

3 See PARA 624.

4 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1351.

5 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1349-1350.

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14. Determination of disputed issues of fact following plea of guilty.

If there are disputed issues of fact relevant to sentence which must be determined by the trial judge before he passes sentence he may either consider the submissions of counsel on the disputed matters¹, obtain an answer from the jury by adding a new count to the indictment² or himself hear evidence (ie hold a 'Newton hearing') and arrive at his own conclusions on the matter³.

1 See *R v Newton* (1982) 77 Cr App Rep 13, 4 Cr App Rep (S) 388, CA; and see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1355.

2 See eg *R v Eubank* [2001] EWCA Crim 891, [2002] 1 Cr App Rep (S) 11; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1353. As to the limitations to this practice see *R v Young* (1990) 12 Cr App Rep (S) 279, CA; *R v Dowdall* (1992) 13 Cr App Rep (S) 441, CA.

3 See *R v Newton* (1982) 77 Cr App Rep 13, 4 Cr App Rep (S) 388, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1353, 1354.

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15. Discretion of court as to sentence.

A discretion¹ in choosing the sentence is allowed to the trial judge except for the offence of murder, for which the court must pass a sentence of imprisonment for life², and for a limited number of offences in respect of which the penalty is fixed by law³. As regards most offences⁴, the policy of the law is to fix a maximum penalty, which is intended only for the worst cases, and to leave to the discretion of the judge the determination of the extent to which in a particular case the sentence awarded should approach to, or recede from, the maximum limit⁵.

It is the duty of counsel to familiarise themselves with the maximum sentence for the offence, the relevant sentencing powers of the court and any relevant sentencing guidelines, and, where appropriate, to direct the judge's attention to them⁶.

1 There is a general principle that no-one should be sentenced for criminal conduct in respect of which he has neither accepted it nor been convicted: *R v Khan* [2009] EWCA Crim 389, [2010] 1 Cr App Rep (S) 1, [2009] All ER (D) 117 (Mar). A convicted person is entitled to humane treatment; excessive fines may not be imposed and unusual punishments may not be inflicted (see the Bill of Rights (1688) s 1); and no one may be subjected to inhuman or degrading punishment (see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 124). See also *A-G's Reference (No 73 of 2006)*, *R v M* [2006] EWCA Crim 2508, (2006) Times, 3 November, [2006] All ER (D) 106 (Oct) (sentencing is an art not a science and judges should not be afraid to show mercy where appropriate).

2 See the Murder (Abolition of Death Penalty) Act 1965 s 1(1); PARA 4; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90.

3 See eg the Habeas Corpus Act 1679 s 4; the Firearms Act 1968 s 51A; the Powers of Criminal Courts (Sentencing) Act 2000 ss 109-111; the Violent Crime Reduction Act 2006 s 29(4), (6); PARA 70; **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 376; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 662, 664, 772. With limited exceptions, a court is obliged to order a person with whom it is dealing for one or more offence to pay a surcharge: see PARA 158.

4 See eg the Criminal Law Act 1977 s 3 (maximum penalties for conspiracy to commit an offence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 71); and the Criminal Attempts Act 1981 s 4 (maximum penalties for attempt to commit an offence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 79, 83).

5 See *R v Bright* [2008] EWCA Crim 462, [2008] 2 Cr App Rep (S) 578, [2008] Crim LR 482; for earlier cases see *R v Harrison* (1909) 2 Cr App Rep 94, CCA; *R v Cooper* (1910) 5 Cr App Rep 273, CCA; *R v Bottomley* (1922) 127 LT 847 at 851, 16 Cr App Rep 184 at 193, CCA; *R v Turner* (1975) 61 Cr App Rep 67, CA; *R v Byrne* (1975) 62 Cr App Rep 159, CA; *R v Ambler*, *R v Hargreaves* [1976] Crim LR 266, CA; *R v Pewter* (10 November 1988, unreported), CA. Where a statute provides that an offence can be committed in more than one way and one way of committing it is clearly more serious than the other, it will normally be wrong to impose the maximum term for the less serious mode of committing the offence: see *R v Waterfield* [1975] 2 All ER 40, 60 Cr App Rep 296, CA. The fact that the judge considers the maximum sentence for the offence is too low is not a ground for discounting mitigating factors and setting the maximum sentence: *R v Carroll* (1994) 16 Cr App Rep (S) 488, [1995] Crim LR 92, CA.

6 *A-G's Reference (No 7 of 1997) (R v Fearon)* [1998] 1 Cr App Rep (S) 268, [1997] Crim LR 908, CA; *R (on the application of Inner London Probation Service) v Tower Bridge Magistrates' Court* [2001] EWHC Admin 401 at [27], [2002] 1 Cr App Rep (S) 179 at [27] per Lord Woolf CJ; *A-G's Reference (No 52 of 2003) (R v Webb)* [2003] EWCA Crim 3731, [2004] Crim LR 306; *R v Beglin* [2002] EWCA Crim 1887, [2003] 1 Cr App Rep (S) 88; *R v Pepper* [2005] EWCA Crim 1181, [2006] 1 Cr App Rep (S) 111; *Bermeo v Middlesex Guildhall Crown Court* [2005] All ER (D) 37 (Nov), DC; *R v Cain* [2006] EWCA Crim 3233, [2007] 2 Cr App Rep (S) 135, [2007] Crim LR 310; and see further **LEGAL PROFESSIONS** vol 66 (2009) PARAS 1210, 1224. As to the duty of counsel to ensure that the court does not exceed its sentencing powers see *R v Clarke* (1974) 59 Cr App Rep 298, [1974] Crim LR

607, CA; *R v Komsta* (1990) 12 Cr App Rep (S) 63, [1990] Crim LR 434, CA; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1231. If an error is made by the judge, particularly in relation to his powers, counsel, whether for the prosecution of defence, should be alive to the possibility of rectifying the sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 155(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1357): *R v Pepper*.

The Criminal Justice Act 1991 s 95 imposes a duty on the Secretary of State to publish annually such information as he considers expedient for the purposes of enabling persons engaged in the administration of justice to become aware of the financial implications of their decisions (s 95(1)(a)), enabling such persons to become aware of the relative effectiveness of different sentences in preventing re-offending (s 95(1)(aa)(i) (s 95(1)(aa) added by the Criminal Justice Act 2003 s 175)) and promoting public confidence in the criminal justice system (Criminal Justice Act 1991 s 95(1)(aa)(ii) (as so added)), or facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground (s 95(1)(b)). Publication must be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned: s 95(2).

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16. Advance indications by judge.

There is an obvious danger that discussions between counsel and the trial judge with regard to sentencing may put undue pressure on the defendant to plead guilty, and accordingly guidance has been issued about advance indications of sentence by a judge in the Crown Court¹. The guidance given in relation to the judge provides that:

- 51 (1) the judge should not give an advance indication of sentence unless one has
been sought by the defendant²;
- 52 (2) indication should normally be confined to the maximum sentence if a plea of
guilty were tendered at the stage at which the indication is sought³;
- 53 (3) the judge is entitled in an appropriate case to remind the defence advocate
that the defendant is entitled to seek an advance indication of sentence⁴;
- 54 (4) the judge retains an unfettered discretion to refuse to give such an indication
and can reserve his position until such time as he feels able to give an indication⁵;
- 55 (5) the judge may or may not give reasons⁶;
- 56 (6) once an indication has been given, it is and remains binding on the judge who
has given it, and it also binds any other judge who becomes responsible for the
case⁷;
- 57 (7) if, after a reasonable opportunity to consider his position, the defendant does
not plead guilty, the indication ceases to have effect⁸;
- 58 (8) an indication should not be sought on a basis of hypothetical facts⁹; and
- 59 (9) where appropriate, there must be an agreed, written basis of plea¹⁰.

The guidance given in relation to the defence is that:

- 60 (a) the process of seeking an indication should normally be started by the
defence¹¹;
- 61 (b) the defendant's advocate should not seek an indication without written
authority, signed by his client, that he, the client, wishes to seek an indication¹²;
- 62 (c) the defendant's advocate is personally responsible for ensuring that his client
fully appreciates that he should plead not guilty unless he was guilty, and that any
indication given remains subject to the entitlement of the Attorney General to refer
an unduly lenient sentence to the Court of Appeal, reflects the situation at the time
when it was given, and relates only to the matters about which an indication has
been sought¹³; and
- 63 (d) an indication should not be sought while there is any uncertainty between the
prosecution and the defence about an acceptable plea to the indictment or any
factual basis relating to the plea¹⁴.

The guidance given in relation to the prosecution is that:

- 64 (i) if there is no final agreement about the plea to the indictment, or the basis of
plea, and the defence nevertheless proceeds to seek an indication, prosecuting
counsel should remind him that normally an indication should not be given until the
basis of the plea has been agreed, or the judge has concluded that he could
properly deal with the case without the need for a hearing on the facts¹⁵;

- 65 (ii) if an indication is sought, the prosecution should normally inquire whether the judge is in possession of all the evidence relied on by the prosecution, including any victim impact statement, as well as any relevant previous convictions of the defendant¹⁶;
- 66 (iii) prosecuting counsel should draw the judge's attention to any minimum or mandatory statutory sentencing requirements¹⁷; and
- 67 (iv) prosecuting counsel should not say anything which might create the impression that the sentence indication had the support or approval of the Crown¹⁸.

Guidance is also given in relation to process¹⁹.

1 See *R v Goodyear* [2005] EWCA Crim 888, [2005] 3 All ER 117, [2005] 2 Cr App Rep 281.

2 See note 1.

3 See note 1.

4 See note 1.

5 See note 1.

6 See note 1. In many cases involving an outright refusal, the judge would probably conclude that it would be inappropriate to give reasons.

7 See note 1. This does not, however, prevent the Attorney-General or the Court of Appeal from increasing a sentence on a reference: see *A-G's Reference (No 48 of 2006)* [2006] EWCA Crim 2396, [2007] 1 Cr App Rep (S) 558; *A-G's Reference (No 112 of 2006)* [2006] EWCA Crim 3385, [2007] 2 Cr App Rep (S) 248.

8 See note 1.

9 See note 1.

10 See note 1. Unless there is an agreed, written basis of plea the judge should refuse to give an indication.

11 See note 1.

12 See note 1.

13 See note 1.

14 See note 1. Any agreed basis should be reduced into writing before an indication is sought. Where there is a dispute about a particular fact which defence counsel believes to be immaterial to the sentencing decision, the difference should be recorded, so that the judge can make up his own mind. The judge should never be invited to give an indication on the basis of what would appear to be a plea bargain. The judge is not to be asked to indicate levels of sentence depending on possible different pleas. If the defendant is unrepresented, he is entitled to seek a sentence indication on his own initiative.

15 See note 1; and see also *R v Newton* (1982) 77 Cr App Rep 13, 4 Cr App Rep (S) 388, CA; PARA 14; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1353-1355.

16 See note 1.

17 See note 1. Where he would be expected to offer assistance with relevant guideline cases or the Sentencing Guideline Council's views, prosecuting counsel should invite the judge to allow him to do so, and, where applicable, remind the judge that the position of the Attorney General to refer any eventual sentencing decision as unduly lenient was not affected.

18 See note 1.

19 See note 1. Any sentence indication will normally be sought at the plea and case management hearing (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1242) but a defendant may seek an indication at a later stage, or even, in rare cases, during the trial itself. In complicated or difficult cases, no less than seven days notice in writing of an intention to seek an indication should normally be given in writing to the prosecution and the court. The hearing should normally take place in open court, with a full recording of the

entire proceedings, and both sides represented, in the defendant's presence. Any reference to a request for a sentence indication is inadmissible in any subsequent trial. Reporting restrictions should normally be imposed, to be lifted if and when the defendant pleads or is found guilty. It is only in wholly exceptional circumstances that counsel should see the judge in private to discuss pleas or sentence; an example would be where the defendant is unaware that he is dying of cancer: *A-G's Reference (No 44 of 2000) (R v Peverett)* [2001] 1 Cr App Rep 416, [2001] Crim LR 60, CA. As to private meetings between counsel and the judge see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1278.

See also the *Attorney General's Guidelines on the Acceptance of Pleas* [2001] 1 Cr App Rep 425, which provide that:

- 6 (1) justice, save in the most exceptional circumstances, is conducted in public, and this includes the acceptance of pleas by the prosecution and sentencing;
- 7 (2) the Code for Crown Prosecutors sets out the circumstances in which pleas to a reduced number of charges, or less serious charges, can be accepted; where this is done the prosecution should be prepared to explain the reasons in open court;
- 8 (3) only in the most exceptional circumstances should plea and sentence be discussed in chambers, and where there is such a discussion the prosecution advocate should at the outset, if necessary, remind the judge of the principle that an independent record must be kept: the prosecution advocate should make a full note of such an event, recording all decisions and comments, which should be made available to the prosecuting authority;
- 9 (4) where there is to be a discussion on plea and sentence and the prosecution advocate takes the view that the circumstances are not exceptional, then it is his duty to remind the judge of the relevant decisions of the Court of Appeal (see *R v Goodyear* [2005] EWCA Crim 888, [2005] 3 All ER 117, [2005] 2 Cr App Rep 281) and disassociate himself from involvement in any discussion on sentence; the prosecution advocate should not do or say anything which could be construed as expressly or impliedly agreeing to a particular sentence; and if the offence is one to which the Criminal Justice Act 1988 s 35 (review of unduly lenient sentences: see PARA 55 et seq) applies he should make it clear that the Attorney General may refer the case for review under s 36 (see PARA 55 et seq); and
- 10 (5) when a case is listed for trial and the prosecution forms the view that the appropriate course is to accept a plea before the proceedings commence or continue, or to offer no evidence, the prosecution should whenever practicable, speak with the victim or the victim's family, so that the position can be explained and their views and interests can be taken into account as part of the decision making process: the victim or victim's family should then be kept informed and decisions explained once made at court.

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17. Sentencing on committal for sentence.

Where an offender is committed by a magistrates' court for sentence¹ the Crown Court must inquire into the circumstances of the case and may deal with the offender in any manner in which it could deal with him if he had just been convicted of the offence on indictment before the court².

Where a magistrates' court commits a person to be dealt with by a Crown Court in respect of certain ancillary offences³, the Crown Court may, after inquiring into the circumstances of the case, deal with him in any way in which the magistrates' court could deal with him if it had just convicted him of the offence⁴.

Where a magistrates' court by which a person aged 14 or over is convicted of an offence is of opinion that, if a hospital order⁵ is made, a restriction order⁶ should also be made and, instead of making a hospital order or dealing with him in any other manner, commits him to the Crown Court to be dealt with⁷, the Crown Court must inquire into the circumstances of the case and:

- 68 (1) if that court would have power to make a hospital order upon the conviction of the offender before the court⁸, may make a hospital order in his case, with or without a restriction order⁹;
- 69 (2) if the court does not make such an order, may deal with the offender in any other manner in which the magistrates' court might have dealt with him¹⁰.

On sentencing a person committed to the Crown Court the conviction and identity of the offender must be strictly proved unless expressly admitted¹¹. If the time for appeal against the conviction has not expired, the court should not proceed to deal with the offender without first ascertaining that he does not intend to appeal against conviction; if he intends to appeal the issue of sentence should be adjourned until after determination of the appeal¹².

1 I.e., in relation to an offender aged 18 or over, under the Powers of Criminal Courts (Sentencing) Act 2000 s 3 or s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1105, 1127) or, as from a day to be appointed, s 3A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1124) or, in relation to an offender under the age of 18, under the Powers of Criminal Courts (Sentencing) Act 2000 s 3C (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1126) or, as from a day to be appointed, s 3B or s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1125, 1128): Powers of Criminal Courts (Sentencing) Act 2000 ss 5(1), 5A(1) (s 5 prospectively substituted, s 5A partly prospectively added, by the Criminal Justice Act 2003 Sch 3 paras 21, 26, 27). At the date at which this volume states the law no day had been appointed for these purposes. Prosecuting counsel should inform the court of the particular provision under which the committal for sentence has been made (*R v Heathcote* (22 February 1972, unreported)).

Until a day to be appointed the power of a magistrates' court under the Powers of Criminal Courts (Sentencing) Act 2000 s 3 is also exercisable by a magistrates' court where it is of the opinion that greater punishment should be inflicted on the offender for the offence than it has power to inflict unless a hospital order is made in his case with a restriction order; and as from that day the powers of a magistrates' court under s 3 or s 3B (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1125) are also exercisable by a magistrates' court where it is of the opinion, or it so appears to the court, as mentioned in s 3 or s 3B unless a hospital order is made in the offender's case with a restriction order: Mental Health Act 1983 s 43(4) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 91; prospectively substituted by the Criminal Justice Act 2003 Sch 3 para 55(1), (2)). See further **MENTAL HEALTH** vol 30(2) (Reissue) PARA 498. At the date at which this volume states the law no day had been appointed for these purposes.

2 Powers of Criminal Courts (Sentencing) Act 2000 ss 5(1), 5A(1) (s 5 prospectively substituted, and s 5A partly prospectively added: see note 1). In relation to committals under s 4, s 5(1) has effect subject to s 4(4), (5) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1127), and in relation to committals under s 4A, s 5A(1) has effect subject to s 4A(4), (5): ss 5(2), 5A(2) (s 5 as so prospectively substituted; and s 5A as so partly prospectively added). As from a day to be appointed the Magistrates' Courts Act 1980 s 20A(1) (which relates to the effect of an indication of sentence under s 20: see **MAGISTRATES** vol 29(2) (Reissue) PARA 659) does not apply in respect of any specified offence (within the meaning of the Criminal Justice Act 2003 s 224: see PARA 68 et seq) in respect of which the offender is committed under the Powers of Criminal Courts (Sentencing) Act 2000 s 3A(2) or in respect of which the offender is committed under s 4(2) and the court states under s 4(4) that, in its opinion, it also has power to commit the offender under s 3A(2): s 5(3) (a), (b) (as so prospectively substituted).

The Crown Court has power to impose a confiscation order on an offender who has been committed for sentence following his summary conviction of an offence triable either way: *R v Pope* [2002] UKHL 26, [2002] 3 All ER 889, [2002] 1 WLR 1966. It has no power under the Powers of Criminal Courts (Sentencing) Act 2000 s 5(1) to remit a case to a magistrates' court where it appears that the defendant pleaded guilty under a material mistake, but it may permit a change of plea and (if such an application is granted) it may remit the case to the magistrates' court: *R v Crown Court at Isleworth, ex p Buda* [2000] 1 Cr App Rep (S) 538, [2000] Crim LR 111, DC. Where the committal order is clearly invalid on its face, the Crown Court should not pass sentence but should remit the case back to the magistrates' court for sentence: *R v Norfolk Justices, ex p DPP* [1950] 2 KB 558, 34 Cr App Rep 120, DC; *R v Sheffield Crown Court and Sheffield Stipendiary Magistrate, ex p DPP* (1994) 15 Cr App Rep (S) 768, 158 JP 334, DC. An order which is valid on its face can only be challenged in the High Court: *R v Sheffield Crown Court, ex p DPP*.

As to the powers of the Crown Court on a committal following conviction in a magistrates' court of an offence of absconding by a person released on bail or agreeing to indemnify sureties under the Bail Act 1976 ss 6(6), 9(3) see ss 6(7), s 9(4); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1199, 1201.

3 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 6 (committal for sentence for offences tried summarily: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129; and **MAGISTRATES** vol 29(2) (Reissue) PARA 780).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 7(1). This includes the statutory limitation on the permissible aggregate term of consecutive sentences for summary offences: *R v Cattell* (1986) 8 Cr App Rep (S) 268, [1986] Crim LR 823, CA; *R v Whitlock* (1991) 13 Cr App Rep (S) 157, CA. The Powers of Criminal Courts (Sentencing) Act 2000 s 7(1) does not apply where under s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129) a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence, but in such a case the powers under the Criminal Justice Act 2003 s 193, Sch 12 paras 8, 9 (power of court to deal with suspended sentence: see PARA 128) are exercisable by the Crown Court: Powers of Criminal Courts (Sentencing) Act 2000 s 7(2) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 92 (subject to a saving in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(b), (3)).

Without prejudice to the Powers of Criminal Courts (Sentencing) Act 2000 s 7(1), (2), where under s 6 or under any enactment to which s 6 applies (see s 6(4); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129) a magistrates' court so commits a person, any duty or power which would otherwise fall to be discharged or exercised by the magistrates' court may not be discharged or exercised by that court but must instead be discharged or may instead be exercisable by the Crown Court: see s 7(3); and *R v Brogan* [1975] 1 All ER 879, 60 Cr App Rep 279, CA. Where under the Powers of Criminal Courts (Sentencing) Act 2000 s 6 a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence triable only on indictment in the case of an adult (being an offence which was tried summarily because of the offender's being under 18 years of age), the Crown Court's powers under s 7(1) in respect of the offender after he attains the age of 18 are powers to do either or both of: (1) impose a fine not exceeding £5,000 (s 7(4)(a)); and (2) deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months (s 7(4)(b)).

5 As to the meaning of 'hospital order' see PARA 332 note 1.

6 As to restriction orders see PARA 337.

7 le under the Mental Health Act 1983 s 43(1): see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 498.

8 le conviction of such an offence as is described in the Mental Health Act 1983 s 37(1): see PARA 332.

9 Mental Health Act 1983 s 43(2)(a).

10 Mental Health Act 1983 s 43(2)(b). The Crown Court has the same power to make orders under s 35 (remand to hospital: see PARA 335), s 36 (remand to hospital for treatment: see PARA 336) and s 38 (interim hospital orders: see PARA 334) in the case of a person committed to the court under s 43 as the Crown Court has under s 35, s 36 and s 38 in the case of a defendant within the meaning of s 35 or s 36 or of a person convicted before that court as mentioned in s 38: s 43(3).

11 See *R v Evans* [1915] 2 KB 762, 11 Cr App Rep 178, CCA. The offender should either be formally identified as the person convicted by the magistrates' court or asked if he admits being the person mentioned in the conviction and committed for sentence: *R v Barker* [1951] 1 All ER 479n, 35 Cr App Rep 20, CCA; cf *R v Jeffries* [1963] Crim LR 559, CCA.

12 See *R v Faithful* [1950] 2 All ER 1251, 34 Cr App Rep 220, CCA. There is no right of appeal against committal for sentence: *R v London Sessions Appeal Committee, ex p Rogers* [1951] 2 KB 74, [1951] 1 All ER 343, DC.

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18. Offences for which offender may be sentenced.

The court may sentence an offender only in respect of an offence of which he has been convicted, or which he has admitted by pleading guilty or by asking for it to be taken into consideration¹.

¹ *R v Wishart* (1979) 1 Cr App Rep (S) 322, CA; *R v Davies* (1980), 72 Cr App Rep 262, 2 Cr App Rep (S) 364, CA; *R v Davies* [1998] 1 Cr App Rep (S) 380, [1998] Crim LR 75, CA. As to taking offences into consideration see PARA 630.

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19. Restrictions on imposition of discretionary custodial sentences for offences committed on or after 4 April 2005.

Where a person is convicted of an offence, other than an offence committed before 4 April 2005¹, which is punishable with a custodial sentence² other than:

- 70 (1) a sentence fixed by law³;
- 71 (2) a life sentence for public protection⁴;
- 72 (3) the required custodial sentence for possession of a firearm or using a person to mind a weapon⁵;
- 73 (4) the specified minimum term for a third class A drug trafficking offence⁶; or
- 74 (5) the specified minimum term for a third domestic burglary⁷,

the court⁸ must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated⁹ with it, was so serious¹⁰ that neither a fine¹¹ alone nor a community sentence¹² can be justified for the offence¹³. However, this does not prevent the court from passing a custodial sentence on the offender if he fails either to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness¹⁴ or to comply with a pre-sentence drug testing order¹⁵.

1 4 April 2005 is the date on which the Criminal Justice Act 2003 s 152 (see the text and notes 2-15) was brought into force by the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2) of which provides that the coming into effect of s 152 on that date is of no effect in relation to offences committed before that date. In connection with offences committed before 4 April 2005 see PARA 20.

2 In the Criminal Justice Act 2003 Pt 12 (ss 142-305) 'custodial sentence' has the meaning given by the Powers of Criminal Courts (Sentencing) Act 2000 s 76: see the Criminal Justice Act 2003 s 305(1); and PARA 20 note 2.

3 Criminal Justice Act 2003 s 152(1)(a). As to sentences fixed by law see PARA 15.

4 Criminal Justice Act 2003 s 152(1)(b) (amended by the Violent Crime Reduction Act 2006 Sch 1 para 9; and the Criminal Justice and Immigration Act 2008 Sch 26 paras 59, 66). The sentence referred to is that required by the Criminal Justice Act 2003 s 225(2) (see PARA 73) or s 226(2) (see PARA 82). For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 Pt 12 (ss 142-305) a sentence falls to be imposed under s 225(2) if the court is obliged to pass a sentence of imprisonment for life (or, in the case of a person aged at least 18 but under 21, a sentence of custody for life) thereunder, and a sentence falls to be imposed under s 226(2) if the court is obliged to pass a sentence of detention for life thereunder: Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(c) (s 164(3) substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 124; Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(c) amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 40, 48; Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(d) added by the Violent Crime Reduction Act 2006 Sch 1 para 8); Criminal Justice Act 2003 s 305(4)(c), (d) (s 305(4)(ba) added by the Violent Crime Reduction Act 2006 Sch 1 para 9; Criminal Justice Act 2003 s 305(4)(c), (d) substituted by the Criminal Justice and Immigration Act 2008 Sch 26 paras 59, 72; Criminal Justice Act 2003 s 305(4)(c) amended (until the coming into force of the Criminal Justice and Court Services Act 2000 s 61) by SI 2008/1587).

5 Criminal Justice Act 2003 s 152(1)(b) (as amended: see note 4). The sentences referred to are those required by the Firearms Act 1968 s 51A(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 664) and the Violent Crime Reduction Act 2006 s 29(4) or (6) (see **CRIMINAL LAW, EVIDENCE AND**

PROCEDURE). For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 Pt 12 (ss 142-305) a sentence falls to be imposed under the Firearms Act 1968 s 51A(2) or the Violent Crime Reduction Act 2006 s 29(4) or (6) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) if it is required by the specified subsection and the court is not of the opinion there mentioned: Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(b), (d) (as substituted and added: see note 4); Criminal Justice Act 2003 s 305(4)(a), (ba) (as so added).

6 Criminal Justice Act 2003 s 152(1)(b) (as amended: see note 4). The sentence referred to is that required by the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772). For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 Pt 12 (ss 142-305) a sentence falls to be imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) if it is required by that provision and the court is not of the opinion there mentioned: Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(a) (as substituted: see note 4); Criminal Justice Act 2003 s 305(4)(b).

7 Criminal Justice Act 2003 s 152(1)(b) (as amended: see note 4). The sentence referred to is that required by the Powers of Criminal Courts (Sentencing) Act 2000 s 111(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294). For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 Pt 12 (ss 142-305) a sentence falls to be imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 111(2) if it is required by that provision and the court is not of the opinion there mentioned: Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(a) (as substituted: see note 4); Criminal Justice Act 2003 s 305(4)(b).

8 As to the meaning of 'court' see PARA 1 note 1.

9 By virtue of the Criminal Justice Act 2003 s 305(1) 'associated' is to be read in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 161(1), which provides that an offence is associated with another if:

- 11 (1) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or
- 12 (2) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.

An offence dealt with by a conditional discharge may be an associated offence of another offence for which the offender is subsequently sentenced if the sentencing court imposes a sentence for the former offence on the same occasion: *R v Godfrey* (1993) 14 Cr App Rep (S) 804, [1993] Crim LR 540, CA. An offence for which a suspended sentence has been passed is not an associated offence of another offence committed during the operational period of the suspended sentence: *R v Cawley* (1994) 15 Cr App Rep (S) 25, CA.

10 As to the seriousness of an offence see *R v Howells* [1999] 1 All ER 50, [1999] 1 Cr App Rep 98, CA; and see also *R v Oliver*, *R v Little* [1993] 2 All ER 9, 96 Cr App Rep 426, CA; *R v Cunningham* [1993] 2 All ER 15, [1993] 1 WLR 183, CA; *R v Cox* [1993] 2 All ER 19, 96 Cr App Rep 452, CA; *R v Baverstock* [1993] 2 All ER 32, 96 Cr App Rep 435, CA; *R v Ollerenshaw* [1999] 1 Cr App Rep (S) 65, [1998] Crim LR 515, CA. As to the determination of the seriousness of an offence see PARA 618.

11 See PARA 139.

12 As to the meaning of 'community sentence' see PARA 163.

13 Criminal Justice Act 2003 s 152(2). As to pre-sentence reports and other requirements see s 156; and PARA 617. Prison overcrowding can be a relevant factor where the sentencer's decision is on the cusp, so that there is a real issue as to whether a community sentence could be justified rather than a custodial sentence: *A-G's Reference (No 11 of 2006)*, *R v Scarth* [2006] EWCA Crim 856, [2006] 2 Cr App Rep 705. See also *A-G's Reference (No 19 of 2006)*, *R v Hoyle* [2006] EWCA Crim 1160, [2006] All ER (D) 123 (Apr) (prison overcrowding not a material factor when deciding sentence for case of such gravity that there was no question that a significant term of imprisonment was called for); *R v Seed* [2007] EWCA Crim 254, [2007] 2 Cr App Rep (S) 436, [2007] Crim LR 501 (guidelines in view of prison overcrowding).

14 Criminal Justice Act 2003 s 152(3)(a).

15 Criminal Justice Act 2003 s 152(3)(b). As to pre-sentence drug testing orders see s 161(2); and PARA 629.

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20. Restrictions on imposition of discretionary custodial sentences for offences committed before 4 April 2005.

Where a person is convicted of an offence committed before 4 April 2005¹ which is punishable with a custodial sentence² other than:

- 75 (1) a sentence fixed by law³;
- 76 (2) the specified minimum term for a third class A drug trafficking offence⁴;
- 77 (3) the specified minimum term for a third domestic burglary⁵; or
- 78 (4) a life sentence for a second serious offence⁶,

the court⁷ must not pass a custodial sentence on the offender unless it is of the opinion:

- 79 (a) that the offence, or the combination of the offence and one or more offences associated⁸ with it, was so serious that only such a sentence can be justified for the offence⁹; or
- 80 (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him¹⁰,

although these restrictions¹¹ do not prevent the court from passing a custodial sentence on the offender if he fails to express his willingness to comply with:

- 81 (i) a requirement which is proposed by the court to be included in a community rehabilitation order¹² or supervision order¹³ and which requires an expression of such willingness¹⁴; or
- 82 (ii) a requirement which is proposed by the court to be included in a drug treatment and testing order¹⁵ or an order¹⁶ to provide samples¹⁷.

Where a court passes a custodial sentence it must state its reasons for so doing in open court¹⁸.

1 The Powers of Criminal Courts (Sentencing) Act 2000 s 79 (see the text and notes 2-18) was repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). In connection with offences committed after 4 April 2005 see PARA 19.

2 In the Powers of Criminal Courts (Sentencing) Act 2000 'custodial sentence' means, by virtue of s 76 (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 108; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 176, Sch 8):

- 13 (1) a sentence of imprisonment (see the Powers of Criminal Courts (Sentencing) Act 2000 s 89(1)(a); and PARA 11);
- 14 (2) a sentence of detention under s 90 (see PARA 81) or s 91 (see PARA 78);
- 15 (3) a sentence of detention for public protection under the Criminal Justice Act 2003 s 226 (see PARAS 82-84);

16 (4) a sentence of detention under s 228 (see PARA 84); and

17 (5) a detention and training order under the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (see PARA 89),

and until a day to be appointed can also mean:

18 (a) a sentence of custody for life under s 93 or s 94 (see PARA 79); and

19 (b) a sentence of detention in a young offender institution (under s 96 (see PARA 85) or otherwise).

At the date at which this volume states the law no such day had been appointed.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 79(1)(a) (repealed with savings: see note 1). As to sentences fixed by law see PARA 15.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 79(1)(b) (repealed with savings: see note 1). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 79(1)(b) (repealed with savings: see note 1). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 79(1)(b) (repealed with savings: see note 1). As to the sentence referred to and when that sentence falls to be imposed see the Powers of Criminal Courts (Sentencing) Act 2000 s 109; and PARA 77.

7 As to the meaning of 'court' see PARA 1 note 1.

8 As to an 'associated offence' see PARA 19 note 9.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 79(2)(a) (repealed with savings: see note 1).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 79(2)(b) (repealed with savings: see note 1).

11 In the Powers of Criminal Courts (Sentencing) Act 2000 s 79(2): see the text and notes 7-10.

12 See PARA 202.

13 See PARA 369.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 79(3)(a) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 1; repealed with savings (see note 1)).

15 See PARAS 198-199.

16 In an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 52(4) (repealed).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 79(3)(b) (repealed with savings: see note 1).

18 See the Powers of Criminal Courts (Sentencing) Act 2000 s 79(4) (repealed with savings: see note 1), which provides that in a case not falling within s 79(3), the court must state in open court that it is of the opinion that either or both of s 79(2)(a), (b) apply and why it is of that opinion, and that in any case it must explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him. As to the meaning of 'open court' see PARA 23 note 3. A magistrates' court must cause a reason stated by it under s 79(4) to be specified in the warrant of commitment and to be entered in the register: s 79(5) (as so repealed with savings).

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21. Restrictions on custodial sentences on persons not legally represented.

Subject to a number of specified exceptions relating to the funding of representation¹, a magistrates' court on summary conviction or the Crown Court on committal for sentence or on conviction on indictment may not pass a sentence of imprisonment² or (in relation to a young offender):

- 83 (1) pass a sentence of detention³;
- 84 (2) until a day to be appointed⁴, pass a sentence of custody for life⁵ or detention in a young offender institution⁶;
- 85 (3) as from that day, pass a sentence of imprisonment on a person who, when convicted, was aged at least 18 but under 21⁷; or
- 86 (4) make a detention and training order⁸,

on or in respect of a person who is not legally represented in that court⁹ (and, in relation to a person who is not a young offender in the context described above, has not been previously sentenced¹⁰ to that punishment by a court in any part of the United Kingdom¹¹).

1 These provisions do not apply in respect of an offender who:

- 20 (1) was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service but the right was withdrawn either because of his conduct or because it appeared that his financial resources were such that he was not eligible to be granted such a right (Powers of Criminal Courts (Sentencing) Act 2000 s 83(3)(a) (s 83(3)(a) amended, s 83(3)(aa) added, by the Criminal Defence Service Act 2006 s 4(2)(c), (3));
- 21 (2) applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible to be granted a right to it (Powers of Criminal Courts (Sentencing) Act 2000 s 83(3)(a) (as so added)); or
- 22 (3) having been informed of his right to apply for such representation and having had the opportunity to do so, he refused or failed to apply (s 83(3)(b)).

As to the funding of representation by the Legal Services Commission as part of the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 159 et seq. As to the effect if the statutory provisions are not complied with see *R v McGinlay*, *R v Ballantyne* (1975) 62 Cr App Rep 156, [1976] Crim LR 78, CA; *R v Birmingham Justices, ex p Wyatt* [1975] 3 All ER 897, 61 Cr App Rep 306, DC.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 83(1).

3 Powers of Criminal Courts (Sentencing) Act 2000 s 83(2)(a). The sentences of detention referred to in the text are sentences under s 90 (see PARA 81) or s 91 (see PARA 78).

4 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 s 83(2)(aa) is added, and s 83(2)(b), (c) repealed, by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 178. At the date at which this volume states the law no such day had been appointed.

5 I.e. a sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 93 or s 94 (see PARA 79).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 83(2)(b), (c) (prospectively repealed: see note 4). A sentence of detention in a young offender institution is a sentence under s 96: see PARA 85.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 83(2)(aa) (prospectively added: see note 4). As to the determination of a person's age for these purposes see PARA 27.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 83(2)(d). As to the making of a detention and training order see PARA 89.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 83(1)(a), (2). For these purposes a person is to be treated as legally represented in a court if, but only if, he has the assistance of counsel or a solicitor to represent him in the proceedings in that court at some time after he is found guilty and before he is sentenced: s 83(4). See *R v Hollywood* (1990) 12 Cr App Rep (S) 325, [1990] Crim LR 817, CA (breach of what is now the Powers of Criminal Courts (Sentencing) Act 2000 s 83(1), (4); sentence of imprisonment invalid). See also *R v Wilson* (1995) 16 Cr App Rep (S) 997, [1995] Crim LR 510, CA.

As to the effect of failing to observe the Powers of Criminal Courts (Sentencing) Act 2000 s 83(1) see *R v Birmingham Justices, ex p Wyatt* [1975] 3 All ER 897, [1976] 1 WLR 260, DC; *R v Hollywood* (1990) 12 Cr App Rep (S) 325, CA (sentence invalid). However, on appeal from the Crown Court to the Court of Appeal, the Court of Appeal may uphold the sentence if it considers it was the appropriate one in all the circumstances: *R v McGinlay*, *R v Ballantyne* (1975) 62 Cr App Rep 156, [1976] Crim LR 78, CA; *R v Hollywood*.

10 For these purposes a previous sentence of imprisonment which has been suspended and which has not taken effect under the Powers of Criminal Courts (Sentencing) Act 2000 s 119 (repealed) or corresponding Northern Irish provisions is to be disregarded: s 83(5). As to the meaning of 'sentence of imprisonment' see PARA 11 note 3; and note that for these purposes 'sentence of imprisonment' does not include a committal for contempt of court or any kindred offence (s 83(6)).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 83(1)(b). As to the meaning of 'United Kingdom' see PARA 9 note 2.

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22. Deferment of sentence.

Both Crown Courts and magistrates' courts¹ may defer passing sentence on an offender for the purpose of enabling the court, or any other court² to which it falls to deal with him to have regard, in dealing with him, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence)³ or to any change in his circumstances⁴. Deferment may not be combined with remand⁵ or with a common law binding over or release on bail⁶ and is exercisable only if:

- 87 (1) the offender consents⁷;
- 88 (2) the offender undertakes to comply with any requirements as to his conduct during the period of the deferment that the court considers it appropriate to impose⁸; and
- 89 (3) the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power⁹.

Any such deferment must be until such date as may be specified by the court, not being more than six months after the date on which the deferment is announced by the court; and, where the passing of sentence has been so deferred, it may not¹⁰ be further deferred¹¹.

A court which has so deferred passing sentence on an offender may deal with him before the end of the period of deferment if during that period he is convicted in Great Britain of any offence¹². Where a court has deferred passing sentence on an offender who undertook to comply with one or more requirements¹³ in connection with the deferment and the person appointed to act as supervisor¹⁴ in relation to the offender has reported to the court that the offender has failed to comply with one or more of the requirements, the court may issue either a summons requiring the offender to appear before it at a time and place specified or a warrant to arrest him and bring him to the court at a time and place specified¹⁵; and if the offender so appears or is so brought before the court, and the court is satisfied that he has failed to comply with one or more of the requirements, it may deal with him before the end of the period of deferment¹⁶.

The power of a court to deal¹⁷ with an offender in a case where the passing of sentence has been deferred includes power to deal with him, in respect of the offence for which the passing of sentence has been deferred, in any way in which the court which deferred passing sentence could have dealt with him¹⁸. Where the passing of sentence in respect of one or more offences has been deferred and a magistrates' court deals with the offender in respect of the offence or any of the offences by committing him to the Crown Court¹⁹ for sentence, the power of the Crown Court to deal with him in respect of the offence or any of the offences includes the power to defer passing sentence on him as if he had been convicted of the offence or offences on indictment²⁰.

Where the passing of sentence in respect of one or more offences has been deferred, it falls to a magistrates' court to determine a relevant matter²¹ and a justice of the peace is satisfied that a person appointed to act as supervisor²² is likely to be able to give evidence that may assist the court in determining that matter and that that person will not voluntarily attend as a witness, the justice may issue a summons directed to that person requiring him to attend the court at the time and place thereby appointed to give evidence²³.

1 In deferring the passing of sentence pursuant to these provisions a magistrates' court is to be regarded as exercising the power of adjourning the trial which is conferred by the Magistrates' Courts Act 1980 s 10(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 707) and accordingly ss 11(1), 13(1)-(3A), (5) (non-appearance of the defendant: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 693, 701) apply without prejudice to the Powers of Criminal Courts (Sentencing) Act 2000 s 1(7) (see note 11) if the offender does not appear on the date specified under s 1(4) (see the text and note 11): s 1D(1) (s 1 substituted, ss 1A-1D added, by the Criminal Justice Act 2003 Sch 23 para 1).

2 'Court' does not include a court-martial: Powers of Criminal Courts (Sentencing) Act 2000 s 163.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 1(1)(a) (as substituted: see note 1). The matters to which the court may have regard in respect of the offender's conduct after conviction also include the extent to which the offender has complied with any requirements with which the offender has undertaken (see s 1(3)(b); and the text and note 8) to comply: s 1(2) (as so substituted).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 1(1)(b) (as substituted: see note 1). The decision to defer sentence should be predominantly for a small group of cases at either the custody threshold or the community sentence threshold where, should the defendant be prepared to adapt his behaviour in a way clearly specified by the sentencer, the court may be prepared to impose a lesser sentence: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) paras 1.2.6-1.2.7. When deferring sentence, sentencers must make clear the consequence of not complying with any requirements, should indicate the type of sentence they are minded to impose, and should impose specific, measurable conditions that do not involve a serious restriction on liberty: para 1.2.9. The judge must make clear his intentions to defer the whole or part of a sentence at the time of the original hearing: *R v Jones* [2003] EWCA Crim 1631, [2004] 1 Cr App Rep (S) 154, [2003] Crim LR 732.

Where a court has deferred passing sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 1 it must forthwith give a copy of the order deferring the passing of sentence and setting out any requirements imposed under s 1(3)(b) (see the text and note 8) to the offender (s 1(5)(a) (as so substituted)), to any local probation board whose officer has been appointed to act as supervisor (s 1(5)(b) (as so substituted)), to any provider of probation services whose officer has been appointed to act as a supervisor in relation to him (s 1(5)(ba) (as so substituted; added by SI 2008/912)), and to a person appointed as supervisor under the Powers of Criminal Courts (Sentencing) Act 2000 s 1A(2)(b) (see note 8) (s 1(5)(c) (as so substituted)). As to local probation boards and providers of probation services see PARAS 733-760.

Nothing in the Powers of Criminal Courts (Sentencing) Act 2000 ss 1, 1A-1D affects the power of the Crown Court to bind over an offender to come up for judgment (see PARA 151) when called upon (s 1(8)(a) (as so substituted)) or the power of any court to defer passing sentence for any purpose for which it may otherwise lawfully do so (s 1(8)(b) (as so substituted)).

5 See the Powers of Criminal Courts (Sentencing) Act 2000 s 1(6) (as substituted: see note 1) (notwithstanding any enactment, a court which under s 1 defers passing sentence on an offender may not on the same occasion remand him).

6 See *R v Dwyer* (1974) 60 Cr App Rep 39, [1974] Crim LR 610, CA; *R v Ross* (1987) 86 Cr App Rep 337, CA.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 1(3)(a) (as substituted: see note 1). As to consent see *R v Fairhead* [1975] 2 All ER 737, 61 Cr App Rep 102, CA; *R v McQuaide* (1974) 60 Cr App Rep 239, CA.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 1(3)(b) (as substituted: see note 1). The requirements may include requirements as to the residence of the offender during the whole or any part of the period of deferment: s 1A(1) (as so added). Where an offender has undertaken to comply with any such requirements the court may appoint an officer of the local probation board or an officer of a provider of probation service or any other person (if he consents) whom the court thinks appropriate to act as a supervisor in relation to him: s 1A(2), (3) (as so added; s 1A(2) amended by SI 2008/912). It is the duty of such a supervisor to monitor the offender's compliance with the requirements and to provide the court to which it falls to deal with the offender in respect of the offence in question with such information as the court may require relating to the offender's compliance with the requirements: s 1A(4) (as so added).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 1(3)(c) (as substituted: see note 1).

10 Is subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 1D(3) (see the text and note 20).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 1(4) (as substituted: see note 1). Where a court which has deferred passing sentence on an offender proposes to deal with him on the date originally specified by the court, or where the offender does not appear on the date specified, the court may issue a summons requiring him to appear before the court at a time and place specified in the summons, or may issue a warrant to arrest

him and bring him before the court at a time and place specified in the warrant: s 1(7) (as so substituted). See also *R v Ingle* [1974] 3 All ER 811, 59 Cr App Rep 306, CA; *R v Anderson* (1983) 78 Cr App Rep 251, 5 Cr App Rep (S) 338, CA (inherent power to postpone sentence at the end of the deferment period; power should, however, be exercised only where there are strong reasons to do so).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 1C(1) (as added: see note 1). As to the meaning of 'Great Britain' see PARA 9 note 2. If an offender on whom a court has under s 1 deferred passing sentence in respect of one or more offences is during the period of deferment convicted in England and Wales of any offence (the 'later offence') then, without prejudice to s 1C(1) and whether or not the offender is sentenced for the later offence during the period of deferment, the court which passes sentence on him for the later offence may also, if this has not already been done, deal with him for the offence or offences for which the passing of sentence was deferred, except that the power so conferred may not be exercised by a magistrates' court if the court which deferred passing sentence was the Crown Court and the Crown Court, in exercising that power in a case in which the court which deferred passing sentence was a magistrates' court, may not pass any sentence which could not have been passed by a magistrates' court in exercising that power: s 1C(2), (3) (as so added). Where a court which under s 1 has deferred passing sentence on an offender proposes to deal with him by virtue of s 1C(1) before the end of the deferment period, it may issue a summons requiring him to appear before the court at a time and place specified or a warrant to arrest him and bring him before the court at a time and place specified: s 1C(4) (as so added). Where under s 1 a court has deferred passing sentence on an offender and before the expiration of the period of deferment he is convicted of a later offence by a magistrates' court, the court officer for the convicting court, if the convicting court was another magistrates' court or the Crown Court, must give notice of the conviction to the court officer for that court: CrimPR 45.1.

13 Ie requirements imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 1(3)(b): see the text and note 8.

14 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 1A(2): see note 8.

15 Powers of Criminal Courts (Sentencing) Act 2000 s 1B(2), (3) (as added: see note 1).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 1B(1) (as added: see note 1).

17 Ie the power of the original court (the court which granted the deferral) under the Powers of Criminal Courts (Sentencing) Act 2000 s 1 to deal with the offender at the end of the period of deferment and any power of that court under s 1B(1) or s 1C(1) (see the text and notes 12,16), or of any court under s 1C(3) (see note 12), to deal with the offender.

18 Powers of Criminal Courts (Sentencing) Act 2000 s 1D(2)(a) (as added: see note 1). Section 1D(2) includes also, in the case of a magistrates' court, the power conferred by s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105) to commit him to the Crown Court for sentence: s 1D(2)(b) (as so added). As to the sentence to be passed at the end of the period of deferment see *R v George* [1984] 3 All ER 13, 79 Cr App Rep 26, CA; *R v Gilby* [1975] 2 All ER 743, 61 Cr App Rep 112, CA; *R v Smith (Michael Stewart)* (1976) 64 Cr App Rep 116, CA; *R v Smith (Joseph)* (1979) 1 Cr App Rep (S) 339, [1979] Crim LR 251, CA; *R v Benstead* (1979) 1 Cr App Rep (S) 32, [1979] Crim LR 400, CA; *R v Glossop* (1981) 3 Cr App Rep (S) 347, [1982] Crim LR 244, CA; *R v Hope* (1980) 2 Cr App Rep (S) 6, [1980] Crim LR 314, CA; *R v Fletcher* (1982) 4 Cr App Rep (S) 118, CA; *R v Aquilina* [1990] Crim LR 134, (1989) 11 Cr App Rep (S) 431, CA. Counsel who appeared for the offender when sentence was deferred should regard himself as bound to appear when sentence is passed if it is at all possible to do so: *R v Ryan* [1976] Crim LR 508, CA. As to the constitution of the court see *R v Gurney* [1974] Crim LR 472; *R v Jacobs* (1975) 62 Cr App Rep 116, CA.

19 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 3.

20 Powers of Criminal Courts (Sentencing) Act 2000 s 1D(3) (as added: see note 1).

21 For these purposes a court determines a relevant matter if it deals with the offender in respect of the offence, or any of the offences, for which the passing of sentence has been deferred or if it determines, for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 1B(1)(b) (see the text and note 16) whether the offender has failed to comply with any requirement imposed under s 1(3)(b) (see the text and note 8): s 1D(6) (as added: see note 1).

22 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 1A(2): see note 8.

23 Powers of Criminal Courts (Sentencing) Act 2000 s 1D(4), (5) (as added: see note 1).

UPDATE

22 Deferment of sentence

NOTE 12--CrimPR 45.1 now Criminal Procedure Rules 2010, SI 2010/60, r 45.1.

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23. Duty to give reasons for sentence.

Any court¹ passing sentence² on an offender must state in open court³, in ordinary language and in general terms, its reasons for deciding on the sentence passed⁴. In complying with this requirement:

- 90 (1) until a day to be appointed, where definitive guidelines⁵ indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind, or is outside that range, the court must state its reasons for deciding on a sentence of a different kind or outside that range; as from that day, the court must identify any definitive sentencing guidelines⁶ relevant to the offender's case and explain how the court discharged any duty in relation to the following of guidelines⁷ imposed on it⁸;
- 91 (2) where the sentence is a custodial sentence⁹ and the general restrictions¹⁰ on imposing a custodial sentence are not excluded¹¹, the court must state that it is of the opinion¹² that the offence, or the combination of the offence and one or more offences associated¹³ with it, was so serious that neither a fine alone nor a community sentence¹⁴ can be justified for the offence, and why it is of that opinion¹⁵;
- 92 (3) where the sentence is a community sentence (excluding a community sentence consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering¹⁶) and the case does not fall within a specified exception¹⁷, the court must state that it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence¹⁸;
- 93 (4) where as a result of taking into account any specified matter¹⁹, the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact²⁰;
- 94 (5) in any case, the court must mention any aggravating or mitigating factors which the court has regarded as being of particular importance (until a day to be appointed) or relevant to the case (as from that day)²¹;
- 95 (6) where the sentence consists of or includes a youth rehabilitation order with intensive supervision and surveillance²² and the case does not fall within the specified exception involving breach of the order²³, the court must state that it is of the opinion that the circumstances in which such an order may be made²⁴ apply and why it is of that opinion²⁵;
- 96 (7) where the sentence consists of or includes a youth rehabilitation order with fostering, the court must state that it is of the opinion that the circumstances in which such an order may be made²⁶ apply and why it is of that opinion²⁷; and
- 97 (8) as from a day to be appointed, where the court did not follow any such guidelines because it was of the opinion that it would be contrary to the interests of justice to do so, it must state why it was of that opinion²⁸.

The requirement that the court state its reasons²⁹ does not apply to an offence the sentence for which is:

- 98 (a) fixed by law³⁰;

- 99 (b) the required custodial sentence for possession of a firearm or using a person to mind a weapon³¹;
- 100 (c) the specified minimum term for a third class A drug trafficking offence³²;
- 101 (d) the specified minimum term for a third domestic burglary³³; or
- 102 (e) in certain circumstances where a sentence has been discounted on grounds of assistance provided by the defendant and it would not be in the public interest to disclose this³⁴.

In addition to the statutory obligation to give reasons³⁵ there are a number of individual provisions imposing a duty on the court to give reasons³⁶.

The Secretary of State (until a day to be appointed) or the Lord Chancellor (as from that day) may also by order prescribe cases in which the requirement to explain does not apply³⁷ and cases in which the court's statement may be made in the absence of the offender or provided in written form³⁸.

1 As to the meaning of 'court' see PARA 1 note 1.

2 In the Criminal Justice Act 2003 Pt 12 Ch 1 (ss 142-176) 'sentence', in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence, and 'sentencing' is to be construed accordingly: s 142(3).

3 In *R v Denbigh Justices, ex p Williams* [1974] QB 759, [1974] 2 All ER 1052, DC, Lord Widgery CJ stated, in the context of a submission that a hearing had not been in open court: 'The trial should be 'public' in the ordinary common-sense acceptation of that term. The doors of the courtroom are expected to be kept open, the public are entitled to be admitted, and the trial is to be public in all respects . . . with due regard to the size of the courtroom, the convenience of the court, the right to exclude objectionable characters and youth of tender years, and to do other things which may facilitate the proper conduct of the trial.'

4 Criminal Justice Act 2003 s 174(1)(a).

5 The guidelines issued under the Criminal Justice Act 2003 s 170(9) (see PARA 638): ss 172(2), 174(6) (s 172(2) prospectively repealed, s 174(2)(a) prospectively substituted, s 174(2)(aa), (6) (definition 'definitive sentencing guidelines') prospectively added, and s 174(2)(e), (4), (6) prospectively amended, by the Coroners and Justice Act 2009 Sch 21 paras 83, 84, Sch 23 Pt 4). At the date at which this volume states the law no day had been appointed for the coming into force of these amendments.

6 As from a day to be appointed definitive 'definitive sentencing guidelines' means sentencing guidelines issued by the Sentencing Council for England and Wales under the Coroners and Justice Act 2009 s 120 (see PARA 655) as definitive guidelines, as revised by any subsequent guidelines so issued: Criminal Justice Act 2003 s 174(6) (definition prospectively added: see note 5).

7 The any duty imposed by the Coroners and Justice Act 2009 s 125 (see PARA 658).

8 Criminal Justice Act 2003 s 174(2)(a) (prospectively substituted: see note 5).

9 As to the meaning of 'custodial sentence' see, by virtue of the Criminal Justice Act 2003 s 305(1), the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2.

10 The duty under the Criminal Justice Act 2003 s 152: see PARA 19.

11 The not excluded by the Criminal Justice Act 2003 s 152 s 152(1)(a) or s 152(1)(b) or s 152(3) (see PARA 19) or any other statutory provision: s 174(2)(b) (s 174(2)(b), (c) amended, s 174(2)(ca), (cb), (4A), (4B) added, by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 80, 81).

12 As to this opinion see PARA 19.

13 As to an 'associated offence' see PARA 19 note 9.

14 As to the meaning of 'community sentence' see PARA 163.

15 Criminal Justice Act 2003 s 174(2)(b) (as amended: see note 11). Where a magistrates' court passes a custodial sentence, it must cause any reason stated by virtue of this requirement to be specified in the warrant

of commitment and entered on the register: s 174(5), (6). Where a court passes a custodial sentence in respect of an offence on an offender who is aged under 18 and the circumstances are such that the court must, in complying with s 174(1)(a), make the statement referred to in s 174(2)(b), that statement must include a statement by the court that it is of the opinion that a sentence consisting of or including a youth rehabilitation order with intensive supervision and surveillance or fostering (see PARAS 204-205) cannot be justified for the offence, and a statement by the court why it is of that opinion: s 174(4A), (4B) (as added: see note 11).

16 As to such orders see PARAS 204-205.

17 The specified exception is that the case does not fall within the Criminal Justice Act 2003 s 151(2): see PARA 170.

18 Criminal Justice Act 2003 s 174(2)(c) (as amended: see note 11). As to this opinion see s 148(1); and PARA 164.

19 In any matter referred to in the Criminal Justice Act 2003 s 144(1): see PARA 623.

20 Criminal Justice Act 2003 s 174(2)(d).

21 Criminal Justice Act 2003 s 174(2)(e) (prospectively amended: see note 5).

22 As to such orders see PARA 204.

23 In the requirement contained in the Criminal Justice and Immigration Act 2008 Sch 1 para 5(2): see PARA 204.

24 In the circumstances specified in the Criminal Justice and Immigration Act 2008 s 1(4)(a)-(c): see PARA 204.

25 Criminal Justice Act 2003 s 174(2)(ca) (as added: see note 11).

26 See note 24.

27 Criminal Justice Act 2003 s 174(2)(cb) (as added: see note 11).

28 Criminal Justice Act 2003 s 174(2)(aa) (prospectively added: see note 5).

29 In the requirements of the Criminal Justice Act 2003 s 174(1)(a) (see the text and notes 1-4).

30 Criminal Justice Act 2003 s 174(3)(a). Provision relating to sentencing for such an offence is made by s 270 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90).

31 Criminal Justice Act 2003 s 174(3)(b) (amended by the Violent Crime Reduction Act 2006 Sch 1 para 9). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

32 Criminal Justice Act 2003 s 174(3)(b) (as amended: see note 31). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

33 Criminal Justice Act 2003 s 174(3)(b) (as amended: see note 31). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

34 See the Serious Organised Crime and Police Act 2005 s 73(7); and PARA 625.

35 In imposed by the Criminal Justice Act 2003 s 174: see the text and notes 1-34.

36 These include: where the court does not impose an automatic life sentence (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90) or activate a suspended sentence in full (see PARAS 128, 137); where the court does not make a compensation order (see PARA 376), a disqualification order (see PARA 315; and **COMPANIES** vol 15 (2009) PARA 1575 et seq), a drinking banning order (see PARAS 320, 529) or a football banning order (see PARA 328); where the court does not bind over the parents of a child convicted of an offence (see PARA 312; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288); where the court does not impose an obligatory disqualification from driving (see PARA 313; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 1057-1079); and where the court does not make a direction under the Criminal Justice Act 2003 s 240 or s 240A (see PARAS 36-37).

37 Criminal Justice Act 2003 s 174(4)(a) (prospectively amended: see note 5). At the date at which this volume states the law no such order had been made.

38 Criminal Justice Act 2003 s 174(4)(b). See note 37.

UPDATE

23 Duty to give reasons for sentence

NOTE 3--Where a judge decides to reduce his sentencing reasons into writing, he must read them out in open court: *A-G's Reference (No 96 of 2009)*; *R v F (sentencing reasons)* [2010] All ER (D) 253 (Feb), (2010) Times, 13 April, CA.

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24. Duty to explain effect of sentence.

A court¹ passing sentence² on an offender must also explain to the offender in ordinary language:

- 103 (1) the effect of the sentence³;
- 104 (2) where the offender is required to comply with any order of the court forming part of the sentence, the effects of non-compliance with the order⁴;
- 105 (3) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence⁵; and
- 106 (4) where the sentence consists of or includes a fine, the effects of failure to pay the fine⁶.

The Secretary of State may by order prescribe cases in which this requirement does not apply⁷ and cases in which the court's explanation may be made in the absence of the offender or may be provided in written form⁸.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the meaning of 'sentence' see PARA 23 note 2.

3 Criminal Justice Act 2003 s 174(1)(b)(i). The judge is required simply to explain the effect of the sentence and it does not make the sentence unfair in any sense which gives rise to a ground of appeal if he simply makes an error in carrying out that function: *R v Giga* [2008] EWCA Crim 703, [2008] 2 Cr App Rep (S) 638, [2008] All ER (D) 134 (Jul).

It is desirable that when sentence is passed the practical effect of the sentence should be understood by the defendant, any victim and any member of the public who is present in court or needs a full report of the proceedings: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.7.1, CA. Whenever a custodial sentence is imposed on an offender the court should explain the practical effect of the sentence in addition to complying with existing statutory requirements: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.7.2, CA. No form of words is prescribed but model statements have been provided in respect of custodial sentences: see *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.7.3, Annex C, CA; *Practice Direction (Custodial Sentences: Explanations)* [2004] 1 WLR 1878 at I.7.3, Annex C. Sentencers will continue to give such explanations as they consider necessary of ancillary orders relating to matters such as disqualification, compensation, confiscation, costs and so on: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.7.4, CA. The power of the Secretary of State to release a prisoner early under supervision is not part of the sentence. The judge is therefore not required in his sentencing remarks to provide an explanation of this power. However, in explaining the effect of custodial sentences, the judge should not say anything which conflicts with the existence of this power: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.7.5, CA; *Practice Direction (Custodial Sentences: Explanations)* [2004] 1 WLR 1878 at I.7.5, Sup Ct.

4 Criminal Justice Act 2003 s 174(1)(b)(ii).

5 Criminal Justice Act 2003 s 174(1)(b)(iii).

6 Criminal Justice Act 2003 s 174(1)(b)(iv).

7 Criminal Justice Act 2003 s 174(4)(a). At the date at which this volume states the law no such order had been made.

8 Criminal Justice Act 2003 s 174(4)(b). See note 7.

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25. Power to recommend licence conditions.

A court¹ which, in respect of any offence² (other than an offence committed before 4 April 2005³), sentences⁴ an offender to a term of imprisonment of 12 months or more or, until a day to be appointed⁵, a sentence of detention in a young offender institution may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted⁶ to the offender on his release from prison⁷.

1 As to the meaning of 'court' see PARA 1 note 1.

2 These provisions do not apply in relation to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Criminal Justice Act 2003 s 228 (see PARA 84): s 238(4).

3 4 April 2005 is the date on which the Criminal Justice Act 2003 s 238 (see the text and notes 1, 4-7) was brought into force by the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 15 of which provides that such commencement is of no effect in a case in which a court sentences an offender in respect of an offence committed before that date.

4 As to the meaning of 'sentence' see PARA 23 note 2.

5 These provisions apply to a court which sentences an offender to a sentence of detention in a young offender institution until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice Act 2003 s 238(1) (amended by SI 2005/643). As to a sentence of detention in a young offender institution see PARA 85.

6 Licence granted under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237-268) (see **PRISONS**). Where a sentence of imprisonment of 12 months or more is imposed on an offender, other than one serving an extended sentence under s 227 or s 228 (see PARAS 75, 84), the offender is entitled to be released after completing half of the sentence: see s 244(1), (3)(a); Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) para 2.1.3; and **PRISONS**. However, the whole of the second half of the sentence will be subject to licence: see the Criminal Justice Act 2003 s 244(1); *New Sentences: Criminal Justice Act 2003* para 2.1.3; and **PRISONS**.

7 Criminal Justice Act 2003 s 238(1) (as amended: see note 5). A recommendation under s 238(1) is not to be treated for any purpose as part of the sentence passed on the offender: s 238(3). In exercising his powers under s 250(4)(b) (see **PRISONS**) in respect of an offender, the Secretary of State must have regard to any recommendation under s 238(1): s 238(2). The conditions of the licence will be set shortly before release by the Secretary of State (with advice from the prison governor responsible for authorising the prisoner's release in consultation with the Probation Service) and in the light of any recommendations made by the sentencing court under s 238: *New Sentences: Criminal Justice Act 2003* para 2.1.3.

When imposing a fixed term custodial sentence of 12 months or more under these provisions, courts should consider reducing the overall length of the sentence that would have been imposed under the previous corresponding provisions, under which the sentence (whether in custody or on licence in the community) did not continue to the end of the term imposed, by in the region of 15%: *New Sentences: Criminal Justice Act 2003* paras 2.1.7-2.1.10. When announcing sentence, sentencers should explain the way in which the sentence has been calculated, how it will be served, and the implications of non-compliance with licence requirements; in particular, it needs to be stated clearly that the sentence is in two parts, one in custody and one under supervision in the community: *New Sentences: Criminal Justice Act 2003* paras 2.1.7-2.1.10.

A court may sensibly suggest interventions that could be useful when passing sentence, but should make specific recommendations about the requirements to be imposed on licence only when announcing short sentences and where it is reasonable to anticipate their relevance at the point of release: *New Sentences: Criminal Justice Act 2003* paras 2.1.11-2.1.14. The governor and Probation Service should have due regard to any recommendations made by the sentencing court but the decision should be contingent upon any changed circumstances during the custodial period: *New Sentences: Criminal Justice Act 2003* paras 2.1.11-2.1.14. The court should make it clear, at the point of sentence, that the requirements to be imposed on licence will ultimately be the responsibility of the governor and Probation Service and that they are entitled to review any

recommendations made by the court in the light of any changed circumstances: *New Sentences: Criminal Justice Act 2003* paras 2.1.11-2.1.14.

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26. Powers of courts to order return of prisoners who commit offences following release on licence.

Where a person who has been serving a determinate sentence of imprisonment or detention¹ for a term of less than 12 months or imposed (for a term of any duration) in respect of an offence committed before 4 April 2005² is released early³ and is convicted of a new offence punishable with imprisonment within the applicable time period⁴, the court by or before which he is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be returned to prison⁵.

The period for which the Crown Court may order the person's return to prison is the whole or any part of the period which begins with the date of the order and is equal in length to the period between the date on which the new offence was committed and the date⁶ on which the person would (but for his release) have served his sentence in full⁷. Powers of a magistrates' court in this regard are restricted to making an order for a period of six months⁸, although they may commit a person to be dealt with by the Crown Court⁹ which on such committal may order his return for the full period set out above¹⁰.

1 The Powers of Criminal Courts (Sentencing) Act 2000 ss 116, 117 (see the text and notes 2-10) apply to persons serving determinate sentences of detention under s 91 (see PARA 78), or sentences of detention in a young offender institution (see PARA 85) as they apply to persons serving equivalent sentences of imprisonment, and references in ss 116, 117 to imprisonment or prison are construed accordingly: s 116(10) (repealed with savings: see note 2). In s 116 'sentence of imprisonment' does not include a committal for contempt of court or any kindred offence: s 116(11) (as so repealed with savings). The person must have begun serving the sentence on or after 1 October 1992 (ie the date in which the Criminal Justice Act 1991 Pt II (see below) was brought into force by the Criminal Justice Act 1991 (Commencement No 3) Order 1992, SI 1992/333): Powers of Criminal Courts (Sentencing) Act 2000 s 116(1)(a) (as so repealed with savings).

For the purposes of any reference in s 116(1) (however expressed) to the term of imprisonment or detention to which a person has been sentenced, consecutive terms and terms which are wholly or partly concurrent are treated as a single term if the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under the Criminal Justice Act 1991 Pt II (ss 32-51) (repealed other than in relation to sentences of imprisonment of less than 12 months or imposed in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 paras 14, 19(c), 20; and **PRISONS**) at any time during the period beginning with the first and ending with the last of those occasions: Powers of Criminal Courts (Sentencing) Act 2000 s 117(1) (as so repealed with savings). Where a suspended sentence of imprisonment is ordered to take effect, with or without any variation of the original term, the occasion on which that order is made must be treated for this purpose as the occasion on which the sentence is passed: s 117(2) (as so repealed with savings). However, the provisions of s 117(1)-(3) apply only where one or more of the sentences concerned were passed on or after 30 September 1998 (ie the date on which the provisions from which these provisions derived (the Criminal Justice Act 1991 s 51(2), (2A), (2B), as substituted or added) were brought into force by the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327); but where, by virtue of the Criminal Justice Act 1991 s 51(2) as enacted, the terms of two or more sentences passed before 30 September 1998 have been treated as a single term for the purposes of Pt II, they must be treated as a single term for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 116(1): s 117(4) (as so repealed with savings). Section 116(1) has effect as if the term of an extended sentence (within the meaning of s 85 (repealed with savings: see PARA 34)) included the extension period (within the meaning thereof): s 117(5) (as so repealed with savings).

2 The Powers of Criminal Courts (Sentencing) Act 2000 ss 116, 117 (see the text and notes 3-10) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 32 paras 90, 116, Sch 37 Pt 7, other than in relation to a person in a case in which the sentence of imprisonment referred to in the Powers of Criminal Courts (Sentencing) Act 2000 s 116(1)(a) is imposed in respect of an offence committed before 4th April 2005

or is for a term of less than 12 months (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 29).

3 le under the Criminal Justice Act 1991 Pt II other than s 33(1A) (Pt II repealed with savings: see note 1): Powers of Criminal Courts (Sentencing) Act 2000 s 116(1)(b) (repealed with savings (see note 2); amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 40, 45).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 116(1) (repealed with savings: see note 2). To fall within the applicable time period for these purposes the new offence must be committed before the date on which the person would (but for his release) have served his sentence in full (s 116(1)(c) (as so repealed with savings)), although the subsequent conviction of that offence may occur before or after that date (s 116(1)(d) (as so repealed with savings)). Where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is taken for these purposes to have been committed on the last of those days: s 116(8) (as so repealed with savings). Where a person has been sentenced to two or more terms of imprisonment which are wholly or partly concurrent and do not fall to be treated as a single term, the date mentioned in s 116(1)(c) is taken to be that on which he would (but for his release) have served each of the sentences in full: s 117(3) (as so repealed with savings). Section 117(3) has effect as if the term of an extended sentence (within the meaning of s 85 (repealed with savings: see PARA 34)) included the extension period (within the meaning thereof): s 117(5) (as so repealed with savings).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 116(2) (repealed with savings: see note 2; and see *R v Round* [2009] EWCA Crim 2667, [2009] All ER (D) 158 (Dec)).

6 le the date mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 s 116(1)(c): see note 4.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 116(2)(a), (b), (4) (repealed with savings: see note 2). The period for which a person to whom these provisions apply is ordered under s 116(2) or (4) (see the text and note 10) to be returned to prison:

- 23 (1) is taken to be a sentence of imprisonment for the purposes of the Criminal Justice Act 1991 Pt II (see note 1) and the Powers of Criminal Courts (Sentencing) Act 2000 s 116 (as a consequence of which the court is not prevented by the Criminal Justice Act 2003 s 265 (see PARA 30) from making any direction authorised by s 116(6)(b) below) (s 116(6)(a), (7) (as so repealed with savings; amended by the Criminal Justice and Immigration Act 2008 Sch 26 para 45));
- 24 (2) must, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence (Powers of Criminal Courts (Sentencing) Act 2000 s 116(6)(b) (as so repealed with savings)); and
- 25 (3) in either case, must be disregarded in determining the appropriate length of that sentence (s 116(6)(c) (as so repealed with savings)).

For the purposes of the Criminal Appeal Act 1968 ss 9, 10 (rights of appeal: see PARAS 46, 47, 48), any order made in respect of a person by the Crown Court under the Powers of Criminal Courts (Sentencing) Act 2000 s 116(2) or (4) is treated as a sentence passed on him for the offence for which the sentence referred to in s 116(1) was passed: s 116(9) (as so repealed with savings).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 116(3)(a) (repealed with savings: see note 2).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 116(3)(b) (repealed with savings: see note 2). Such committal may be in custody or on bail and is subject to the Criminal Justice and Public Order Act 1994 s 25 (restrictions on granting bail: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1170): Powers of Criminal Courts (Sentencing) Act 2000 s 116(3)(b) (as so repealed with savings). Section 116(3)(b) does not confer on the magistrates' court a power to commit the person to the Crown Court for sentence for the new offence, but this is without prejudice to any such power conferred on the magistrates' court by any other provision of the Powers of Criminal Courts (Sentencing) Act 2000: s 116(5) (as so repealed with savings).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 116(4) (repealed with savings: see note 2). As to the specified period see note 7.

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27. Ages and dates of conviction and sentence.

The relevant date in relation to the making of a guardianship order¹ is the offender's age at the time of sentencing. In relation to the restrictions on imprisonment², community and youth community orders³, custody for life⁴, detention for specified serious offences⁵, detention and training orders⁶ and detention in a young offender institution⁷, it is the offender's age at conviction or finding of guilt. Power to commit for sentence is also governed by age at conviction⁸. In relation to an offender committed for sentence after conviction of an offence triable either way, the material date is that of sentence⁹.

If an offender has been committed for sentence¹⁰ with a view to a particular form of sentence and the Crown Court does not pass such a sentence, its powers, which are limited to those of the committing court, are governed by the offender's age at the date of the committal¹¹. The same principle applies where a magistrates' court commits an offender to the Crown Court for sentence for a specified offence, having already convicted that same person of another specified offence¹².

For the purposes of sentences passed for the original offence, after conviction of a further offence committed during the operation of a conditional discharge¹³, the relevant date is that of the passing of the fresh sentence.

The age of an offender at the relevant time is deemed to be that which appears to the court after considering any available evidence to be his age at that time¹⁴. The time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth¹⁵.

1 See PARA 332.

2 See PARA 11 et seq.

3 See PARA 163 et seq.

4 See PARA 79.

5 See PARA 78.

6 See PARA 89 et seq.

7 See PARA 85.

8 See PARA 17.

9 See PARA 17; and *R v Robinson* [1963] Crim LR 206, CCA.

10 See under the Powers of Criminal Courts (Sentencing) Act 2000 s 3C (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1126).

11 *R v Hammond (George)* [1963] 2 QB 450, 47 Cr App Rep 156, CCA; *R v Robson* [2006] EWCA Crim 1414, [2007] 1 All ER 506, [2007] 1 Cr App Rep (S) 301.

12 See the Powers of Criminal Courts (Sentencing) Act 2000 s 6(1)-(3); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129.

13 See PARA 42.

14 Magistrates' Courts Act 1980 s 150(4); Powers of Criminal Courts (Sentencing) Act 2000 s 164(1); Criminal Justice Act 2003 s 305(2). Where a court passes sentence on the assumption that the offender is of a particular age, having considered the available evidence, the sentence will not be unlawful if it is subsequently established that he is of a different age: *R v Farnedale* (1973) 58 Cr App Rep 336, CA; *R v Brown* (1989) 11 Cr App Rep (S) 263, [1989] Crim LR 750, CA. See also PARA 11 note 4.

15 See the Family Law Reform Act 1969 s 9(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 2, 3.

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28. Matters to be taken into account.

A court which deals with an offender in respect of his offence is required to take a number of matters into account including:

- 107 (1) the purposes of sentencing¹;
- 108 (2) sentencing principles and guidelines²;
- 109 (3) the circumstances of the offence³;
- 110 (4) the seriousness of the offence⁴;
- 111 (5) aggravating factors⁵;
- 112 (6) guilty pleas and mitigation⁶;
- 113 (7) outstanding offences⁷;
- 114 (8) disparity of sentence⁸;
- 115 (9) the offender assisting the police or prosecution⁹;
- 116 (10) pre-sentence reports and other information about the offender¹⁰;
- 117 (11) the results of pre-sentence drug tests¹¹; and
- 118 (12) the personal statements of victims¹².

1 See PARA 615.

2 See PARA 638 et seq.

3 See PARA 617.

4 See PARA 618.

5 See PARAS 619-622.

6 See PARAS 623-624.

7 See PARA 630.

8 See PARA 631.

9 See PARA 625.

10 See PARAS 626-628.

11 See PARA 629.

12 See PARAS 632.

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(4) TERMS OF IMPRISONMENT

29. Tariff.

In terms of custodial sentences the courts apply a type of 'tariff' system which has been developed on a non-statutory basis through guideline judgments delivered by the Court of Appeal (in which, having considered the existing practice in sentencing for the offence in question, and identified mitigating and aggravating features, the Court of Appeal has set out a 'tariff' or starting point for passing sentence)¹. Sentencing guidelines (which are referred to as definitive guidelines to distinguish them from the guidelines issued by the Court of Appeal) are also issued².

¹ The Court of Appeal has occasionally also given guideline decisions on particular types of sentence: see eg *R v George* [1984] 3 All ER 13, 79 Cr App Rep 26, CA (deferment of sentence).

For examples of guideline cases see *R v Aramah* (1982) 76 Cr App Rep 190, 4 Cr App Rep (S) 407, [1983] Crim LR 271 (guidelines on appropriate sentences for possession of controlled drugs); *R v Millberry* [2002] EWCA Crim 2891, [2003] 2 All ER 939, [2003] 2 Cr App Rep (S) 142 (guidelines on appropriate sentences for rape); *R v Saw* [2009] EWCA Crim 1, [2009] 2 All ER 1138, [2009] 2 Cr App Rep (S) 367 (guidelines on appropriate sentences for domestic burglary). Guideline cases provide guidelines only and should not be applied rigidly to every case: *R v Nicholas* (1986) Times, 23 April, CA; *R v Attuh-Benson* [2004] EWCA Crim 3032, [2005] 2 Cr App Rep (S) 52; and see *A-G's Reference (No 4 of 1989)* [1990] 1 WLR 41, 90 Cr App Rep 366, CA (task of sentencing judge should not involve a rigid arithmetical approach). The judge can choose whether or not to apply a Court of Appeal guideline depending on whether it is appropriate to do so; if the guidelines are not followed, an explanation should be given: *A-G's References (Nos 31, 45, 43, 42, 50 and 51 of 2003)* [2004] EWCA Crim 1934, [2005] 1 Cr App Rep (S) 377. It is not open to a judge to disregard a Court of Appeal guideline because he does not agree with it: *R v Chambers* [2005] EWCA Crim 1160, [2006] 1 Cr App Rep (S) 135. As to sentencing authorities generally see *R v De Havilland* (1983) 5 Cr App Rep (S) 109 at 114, CA; *R v Morris* (1987) 9 Cr App Rep (S) 528 at 530, CA; *R v Lyon* [2005] EWCA Crim 1365, (2005) Times, 19 May, [2005] All ER (D) 179 (May). Contrast *R v Johnson* 15 Cr App Rep (S) 827, [1994] Crim LR 537, CA; *A-G's Reference (No 7 of 1997) (R v Fearon)* [1998] 1 Cr App Rep (S) 268, [1997] Crim LR 908, CA; *A-G's Reference (No 52 of 2003) (R v Webb)* [2003] EWCA Crim 3731, [2004] Crim LR 306.

² See PARA 635 et seq.

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30. Commencement of Crown Court sentence.

A sentence¹ imposed, or other order² made, by the Crown Court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs³. This power to direct, however, has effect subject to the requirement that a court sentencing a person to a term of imprisonment⁴ may not order or direct that the term is to commence on the expiry of any other sentence of imprisonment⁵ from which he has been⁶ released early⁷.

1 As to the meaning of 'sentence' see PARA 23 note 2; for this purpose 'sentence' also includes a recommendation for deportation made when dealing with an offender: Powers of Criminal Courts (Sentencing) Act 2000 ss 154(3), 155(8). As to the sentences which may be passed by the Crown Court see PARA 1.

2 For this purpose 'order' does not include an order under the Access to Justice Act 1999 s 17(2) (order to pay costs of representation funded by Criminal Defence Service: see **LEGAL AID** vol 65 (2008) PARA 174): Powers of Criminal Courts (Sentencing) Act 2000 ss 154(3), 155(8). As to the orders which may be made by the Crown Court see PARAS 2, 3.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 154(1). This does not empower the court to antedate a sentence: *R v Gilbert* [1975] 1 All ER 742, 60 Cr App Rep 220, CA; *R v Whitfield* [2001] EWCA Crim 3043, [2002] 2 Cr App Rep (S) 44, CA; *R v Salmon* [2002] EWCA Crim 2088, [2003] 1 Cr App Rep (S) 441, CA. See, however, the text and notes 4-6. Where a sentence or order is varied by the Crown Court (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1357), the sentence or order as so varied takes effect from the beginning of the day on which it was originally imposed or made unless the court otherwise directs (Powers of Criminal Courts (Sentencing) Act 2000 s 155(5)); although for the purposes of time running in respect of a notice of appeal or of application for leave to appeal under the Criminal Appeal Act 1968 s 18(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1863) or of an application for leave to refer a case under the Criminal Justice Act 1988 Sch 3 para 1 (see PARA 60) it is to be regarded as imposed on the day on which it is varied (Powers of Criminal Courts (Sentencing) Act 2000 s 155(6)).

4 These provisions (ie the Criminal Justice Act 2003 s 265(1)) applies to a court sentencing a person to a term of imprisonment for an offence committed before 4 April 2005 or a term of imprisonment of less than 12 months for an offence committed on or after that date as it applies to the imposition of any other term of imprisonment: s 265(1A) (s 265(1) amended, s 165(1A), (1B) added, by the Criminal Justice and Immigration Act 2008 s 20(1), (4)).

5 'Sentence of imprisonment' does not include a committal in default of payment of any sum of money, for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone (including, as from a day to be appointed, contempt of court or any kindred offence); and references to 'sentencing an offender to imprisonment' are to be read accordingly: Criminal Justice Act 2003 s 305(1) (prospectively amended by the Police and Justice Act 2006 s 34(1), (6)). At the date at which this volume states the law no day had been appointed for this purpose. For this purpose, 'sentence of imprisonment' also includes a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Criminal Justice Act 2003 s 228 (extended sentence: see PARA 84) or (until the date on which the Criminal Justice and Court Services Act 2000 s 61 comes into force: see PARA 11) a sentence of detention in a young offender institution under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (see PARA 85) or the Criminal Justice Act 2003 s 227 (see PARA 75): s 265(2) (amended by SI 2005/643).

6 Ie under the early-release provisions of the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237-268) or the Criminal Justice Act 1991 Pt 2 (ss 32-51) (repealed other than in relation to sentences of imprisonment of less than 12 months or imposed in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 paras 14, 19(c), 20; and **PRISONS**): Criminal Justice Act 2003 s 265(1) (as amended: see note 4). Where an intermittent custody order (see PARA 100) applies to the other sentence, the reference in s 265(1) to release under Pt 12 Ch 6 does not include release by virtue of s 183(1)(b)(i) (periods of temporary release on licence before the custodial days specified under s 183(1)(a) have been served): s 265(1B) (as so added).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 154(2) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 121); Criminal Justice Act 2003 s 265(1) (as amended: see note 4). See *R v Lowe*, *R v Leask* [1999] 3 All ER 762, [1999] 2 Cr App Rep (S) 316, CA; *R v Laurent* [2001] 1 Cr App Rep (S) 224, [2000] Crim LR 868, CA; *R v Cawthorn* [2001] 1 Cr App Rep (S) 136, CA; *R v Whittles* [2009] EWCA Crim 580, [2009] 2 Cr App Rep (S) 673, [2009] Crim LR 534; *R v Lloyd* [2009] EWCA Crim 1923, [2009] All ER (D) 05 (Sep).

As a result of the Criminal Justice Act 2003 s 265(1), where an offender, who has been released early on licence from a custodial sentence under Pt 12 Ch 6 and is then recalled under s 254 to continue serving that sentence (and is still doing so), appears before the court for sentencing for another offence, any new sentence must normally be ordered to begin at once and run concurrently with the original sentence; it must not be ordered to commence at the expiry of the original sentence. However, if the power to order the offender to return to custody to serve the remainder of his sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 116 (see PARA 26) is available, the court may exercise that power and order any new sentence to run consecutively to the period of return (see s 116(7); and PARA 26). If the power to order the offender's return to custody under s 116 is not available, the court should not impose a disproportionate sentence for the later offence to compensate for the fact that the sentence cannot be ordered to run consecutively to the earlier sentence (see *R v Whittles*).

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31. Imprisonment in cases where no term is fixed.

Where a person is convicted on indictment of an offence against any enactment and is for that offence liable to be sentenced to imprisonment, but the sentence is not by any enactment either limited to a specified term or expressed to extend to imprisonment for life, he is liable to imprisonment for not more than two years¹.

An indictable offence at common law for which no maximum is provided by statute is punishable by fine and imprisonment, and in such a case there is no limit fixed for the period of imprisonment provided that it is not inordinate².

A magistrates' court may not impose imprisonment for less than five days³, but in certain cases detention within the precincts of the court or in police custody or in a police station may be ordered⁴. There are also restrictions on the passing of custodial sentences on defendants who are not legally represented⁵.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 77. For restrictions on passing a custodial sentence see PARA 19. As to sentencing an offender to imprisonment see PARA 11 note 2.

2 *R v Castro* (1880) 5 QBD 490 at 509, CA, per Bramwell LJ; affd sub nom *Castro v R* (1881) 6 App Cas 229, HL. As to fines see PARA 139 et seq.

3 Magistrates' Courts Act 1980 s 132. 'Impose imprisonment' in this context means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress (or, as from a day to be appointed, goods) to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone: s 150(1) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 paras 45, 63). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment. Justices who activate a suspended sentence are not 'imposing' a sentence (*R v Chamberlain* (1991) 13 Cr App Rep (S) 525, 156 JP 440, CA), and therefore the restrictions on imposing consecutive terms in the Magistrates' Courts Act 1980 (see PARA 35) do not apply.

4 See the Magistrates' Courts Act 1980 ss 135, 136; and PARA 7.

5 See PARA 21.

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32. Term must be shortest available.

Where a court passes a custodial sentence¹ in relation to an offence committed after 4 April 2005² it must in general³ be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate⁴ with the seriousness⁵ of the offence, or the combination of the offence and one or more offences associated⁶ with it⁷.

This requirement does not apply in the case of a custodial sentence fixed by law⁸ or a life sentence for public protection⁹ and is subject to the statutory provisions specifying:

- 119 (1) the required custodial sentence for possession of a firearm or using a person to mind a weapon¹⁰;
- 120 (2) the specified minimum term for a third class A drug trafficking offence¹¹;
- 121 (3) the specified minimum term for a third domestic burglary¹²; or
- 122 (4) extended sentences for violent or sexual offences¹³.

1 As to the meaning of 'custodial sentence' see, by virtue of the Criminal Justice Act 2003 s 305(1), the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2.

2 4 April 2005 is the date on which the Criminal Justice Act 2003 s 153 (see the text and notes 3-13) was brought into force by the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2) of which provides that the coming into effect of s 153 on that date is of no effect in relation to offences committed before that date.

3 For the exceptions to this rule see the text and notes 8-13.

4 Where an offender who is already serving a sentence of life imprisonment is convicted of a subsequent offence for which a term of imprisonment is appropriate, a sentence longer than is commensurate with the seriousness of that offence may not be imposed solely to ensure that he will remain in prison after the date on which he would be eligible for release on licence in respect of the life sentence: *R v Black (Craig)* [2000] 2 Cr App Rep (S) 41, [2000] Crim LR 317, CA. See also *R v Whittles* [2009] EWCA Crim 580, [2009] 2 Cr App Rep (S) 673, [2009] Crim LR 534; and PARA 30.

5 As to the seriousness of an offence see PARA 618.

6 As to an 'associated offence' see PARA 19 note 9.

7 Criminal Justice Act 2003 s 153(2). As to pre-sentence reports and other requirements see s 156; and PARA 617.

8 As to sentences fixed by law see PARA 15.

9 Criminal Justice Act 2003 s 153(1) (amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 59, 67, Sch 28 Pt 2). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 4.

10 Criminal Justice Act 2003 s 153(2) (amended by the Violent Crime Reduction Act 2006 Sch 1 para 9). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

11 Criminal Justice Act 2003 s 153(2) (as amended: see note 10). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

12 Criminal Justice Act 2003 s 153(2) (as amended: see note 10). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

13 Criminal Justice Act 2003 s 153(2) (as amended: see note 10). The sentences referred to are those required by the Criminal Justice Act 2003 ss 227(2), 228(2) (see PARAS 75, 84).

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33. Discretionary life sentence--minimum term.

If a court¹ passes a life sentence² in circumstances where the sentence is not fixed by law³, the court must, unless it orders⁴ otherwise, order that the early release provisions⁵ apply to the offender as soon as he has served the part of the sentence which is specified in the order⁶. The part of the sentence must be such as the court considers appropriate, taking into account specified matters⁷.

If the offender was aged 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence or of the combination of the offence and one or more offences associated with it, no such order⁸ should be made, the court must order that the early release provisions are not to apply to the offender⁹.

1 For these purposes 'court' includes the Court Martial: Powers of Criminal Courts (Sentencing) Act 2000 s 82A(7) (s 82A added by the Criminal Justice and Courts Service Act 2000 s 60(1), (3); Powers of Criminal Courts (Sentencing) Act 2000 s 82A(7) amended by the Armed Forces Act 2006 Sch 16 para 163).

2 As to the meaning of 'life sentence' for these purposes see the Crime (Sentences) Act 1997 s 34(2); and **PRISONS** vol 36(2) (Reissue) PARA 621 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(7) (as added: see note 1)).

3 Powers of Criminal Courts (Sentencing) Act 2000 s 82A(1) (as added (see note 1); s 82A(1), (3)(b), (c), (4) amended, s 82A(4A) added, by the Criminal Justice Act 2003 Sch 32 paras 90, 109(1)-(4), Sch 37 Pt 8). As to sentences fixed by law see PARA 15.

4 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(4) (see the text and note 9).

5 Ie the Crime (Sentences) Act 1997 s 28(5)-(8) (see **PRISONS** vol 36(2) (Reissue) PARA 621). Under the early release provisions an offender who has served the term specified in the sentence may require his case to be referred to the Parole Board, who may direct his release, if satisfied that it is no longer necessary for the protection of the public that he should be confined; if the Parole Board is not so satisfied, the prisoner remains in custody. Thus such a sentence falls into two parts: (1) the relevant part, which consists of the period of detention imposed for punishment and deterrence, taking into account the seriousness of the offence; and (2) the remaining part of the sentence, during which the prisoner's detention will be governed by considerations of risk to the public: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at IV.47.2, CA.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) (as added: see note 1). An order under s 82A is a 'sentence' for the purposes of the Criminal Appeal Act 1968 s 9 (see PARA 46) and is therefore subject to appeal (*R v McBean* [2001] EWCA Crim 1891, [2002] 1 Cr App Rep (S) 430, [2001] Crim LR 839) or a reference by the Attorney General (*A-G's Reference (No 49 of 2005)* [2006] 2 Cr App Rep (S) 92; *A-G's Reference (No 3 of 2004)* [2004] EWCA Crim 1532, [2005] 1 Cr App Rep (S) 230).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 82A(3) (as added: see note 1). The specified matters are:

- 26 (1) the seriousness of the offence, or the combination of the offence and one or more offences associated with it (s 82A(3)(a) (as so added));
- 27 (2) the effect of any direction which would have been given under the Criminal Justice Act 2003 s 240 (crediting periods of remand in custody: see PARA 36) or s 240A (crediting periods of remand on bail: see PARA 37) or under the Armed Forces Act 2006 s 246, if it had sentenced him to a term of imprisonment (Powers of Criminal Courts (Sentencing) Act 2000 s 82A(3)(b) (as added and amended (see notes 1, 3); further amended by the Criminal Justice and Immigration Act 2008 s 22(5); and by the Armed Forces Act 2006 Sch 16 para 163)); and

- 28 (3) the early release provisions as compared with the Criminal Justice Act 2003 s 244(1) (duty to release prisoners on licence: see **PRISONS**) (Powers of Criminal Courts (Sentencing) Act 2000 s 82A(3)(c) (as so added and amended)).

In relation to head (2) above, although the judge is required to take into account time spent in custody on remand when fixing the specified period for the purposes of reference to the Parole Board, circumstances may arise where it will not be appropriate to give credit for that time: *R v M, R v L* [1998] 2 All ER 939, [1999] 1 Cr App Rep (S) 6, CA.

When imposing a discretionary life sentence, the judge should first decide the determinate part of the sentence which he would have imposed if the need to protect the public and the potential danger of the offender had not required him to pass a life sentence, before going on to consider the length of the specified period: *R v M, R v L* [1998] 2 All ER 939, [1999] 1 Cr App Rep (S) 6, CA (applying *R v Secretary of State for the Home Department, ex p Furler* [1998] 1 All ER 23, [1998] 1 Cr App Rep (S) 208). In the case of a young offender, save in exceptional circumstances, the specified period should be fixed at half of the notional determinate sentence as the part of the sentence to be served before the case is referred to the Parole Board for consideration of release; and in the case of an adult offender, half the determinate period will also usually be appropriate, although there may well be circumstances which will justify a period of more than a half and up to two-thirds: *R v M, R v L*. The specified period should be fixed at half the determinate term unless there are particular grounds for a greater proportion, which grounds must be stated by the court: *R v Szczerba* [2002] EWCA Crim 440, [2002] 2 Cr App Rep (S) 387.

However, as from a day to be appointed, it is provided that if the offender was aged 18 or over when he committed the offence and the court is of the opinion that the seriousness of the offence, or of the combination of the offence and one or more other offences associated with it, is exceptional (but not such that the court proposes to make an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(4)), and would not be adequately reflected by the period which the court would otherwise specify under s 82A(2), then in deciding the effect which the comparison required by s 82A(3)(c) is to have on reducing the period which the court determines for the purposes of s 82A(3)(a) (and before giving effect to s 82A(3)(b)), the court may, instead of reducing that period by one-half, reduce it by such lesser amount (including nil) as the court may consider appropriate according to the seriousness of the offence: Powers of Criminal Courts (Sentencing) Act 2000 s 82A(3A), (3C)(a) (s 82A as so added; s 82A(3A)-(3C) prospectively added by the Criminal Justice and Immigration Act 2008 s 19). At the date at which this volume states the law no day had been appointed for the coming into force of these provisions.

Also as from a day to be appointed, where the court is of the opinion that the period which it would otherwise specify under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) would have little or no effect on time spent in custody, taking into account all the circumstances of the particular offender, then in deciding the effect which the comparison required by s 82A(3)(c) is to have on reducing the period which the court determines for the purposes of s 82A(3)(a) (and before giving effect to s 82A(3)(b)), the court may, instead of reducing that period by one-half, reduce it by such lesser amount (but not by less than one-third) as the court may consider appropriate in the circumstances: s 82A(3B), (3C)(b) (s 82A as so added; and s 82A(3B) prospectively added). At the date at which this volume states the law no day had been appointed for the coming into force of these provisions.

When fixing the determinate term, the sentencing judge should discount from it the element reflecting the need to protect the public from the danger posed by the offender because that is already reflected in the imposition of a discretionary life sentence. The fixing of a notional determinate sentence is not a precise calculation but requires a balancing exercise to take account of the risk of double punishment and ensure that the public risk element is not included; however, it is appropriate to reflect an element of deterrence as necessary: *R v Wheaton* [2004] EWCA Crim 2270, [2005] 1 Cr App Rep (S) 425; *R v Maguire* [2004] EWCA Crim 2220, [2005] 1 Cr App Rep (S) 435 (*R v M, R v L* applied).

As to an 'associated offence' see PARA 19 note 9.

- 8 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) (see the text and notes 1-6).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 82A(4) (as added and amended: see notes 1, 3). No order under s 82A(4) may be made (and, as from a day to be appointed, the provisions described in s 82A(3A), (3C)(a) (see note 7) do not apply) where the life sentence is either a sentence of imprisonment or (until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force) a sentence of detention in a young offender institution for public protection under the Criminal Justice Act 2003 s 225 (see PARA 73) or a sentence of detention for public protection under s 226 (see PARA 82): Powers of Criminal Courts (Sentencing) Act 2000 s 82A(4A) (as so added; prospectively amended by the Criminal Justice and Immigration Act 2008 s 19). At the date at which this volume states the law no day had been appointed for the coming into force of the amendment made by the Criminal Justice and Immigration Act 2008.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS/(4) TERMS OF IMPRISONMENT/34. Length of discretionary sentences for offences committed before 4 April 2005.

34. Length of discretionary sentences for offences committed before 4 April 2005.

Where in respect of an offence committed before 4 April 2005¹ a court² passes a custodial sentence³ other than a sentence fixed by law or a life sentence for a second serious offence⁴ then, subject to the provision made in respect of the specified minimum terms for a third class A drug trafficking offence or domestic burglary⁵, the custodial sentence must be:

- 123 (1) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated⁶ with it⁷; or
- 124 (2) where the offence is a violent or sexual offence, for such longer term⁸ (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender⁹.

Where a court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence or the combination of the offence and one or more offences associated with it¹⁰, it must state its reasons for so doing in open court¹¹.

1 The Powers of Criminal Courts (Sentencing) Act 2000 ss 80, 85(6) (see the text and notes 2-11) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). See also PARA 33.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the meaning of 'custodial sentence' see PARA 20 note 2.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 80(1) (repealed with savings: see note 1). As to sentences fixed by law see PARA 15; as to a life sentence for a second serious offence see s 109(2); and PARA 77.

5 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 110(2), 111(2): see PARA 19 notes 6, 7; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772.

6 As to an 'associated offence' see PARA 19 note 9.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 80(2)(a) (repealed with savings: see note 1). Where an extension period is imposed (see PARA 76) s 80(2) applies as if the term of an extended sentence did not include the extension period: s 85(6) (as so repealed with savings).

8 A custodial sentence for an indeterminate period is regarded for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 80(2), (3) as a custodial sentence for a term longer than any actual term: s 80(4) (repealed with savings: see note 1). See note 7.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 80(2)(b) (repealed with savings: see note 1).

10 Ie other than a custodial sentence falling to be imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) or s 111(2) (see the text and note 5) which is for the minimum term thereby specified: s 80(5) (repealed with savings: see note 1).

11 See the Powers of Criminal Courts (Sentencing) Act 2000 s 80(3) (repealed with savings: see note 1), which provides that in such circumstances the court must state in open court that it is of the opinion that s

80(2)(b) applies and why it is of that opinion and explain to the offender in open court and in ordinary language why the sentence is for such a term. As to the meaning of 'open court' see PARA 23 note 3.

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35. Concurrent and consecutive terms.

A person sentenced on several charges, whether on separate indictments or on different counts in one indictment, should normally be sentenced to a separate sentence for each offence, unless the court decides to impose no separate penalty in respect of one of more of the offences; the terms of imprisonment may be directed either to run concurrently with one another or to be consecutive, so that one commences on the expiration of another¹.

Where sentence of imprisonment is passed on a person already serving a sentence for another offence, the court may impose a sentence for the subsequent offence to run concurrently with², or to commence at the expiration of, the existing sentence, except where the Criminal Justice Act 2003 applies³.

A court which imposes consecutive sentences must review the aggregate term and consider whether it is just and appropriate when the offences are looked at as a whole⁴: however, there is no reason why a sentence should not be imposed which requires an offender to commence to serve an additional period after the minimum period before he could be considered for parole⁵.

If custodial sentences are imposed for an offence committed while the offender was on bail and for the offence in respect of which he was on bail they should normally be consecutive⁶.

A magistrates' court⁷ imposing imprisonment⁸ or detention in a young offender institution⁹ on any person may order that the term of imprisonment or detention is to commence on the expiration of any other term of imprisonment or detention imposed by that or any other court¹⁰. However, where a magistrates' court imposes two or more terms of imprisonment or detention to run consecutively, the aggregate of such terms must not exceed six months (or, as from a day to be appointed, 65 weeks)¹¹. Until a day to be appointed¹², if two or more of the terms imposed by the court are imposed in respect of an offence triable either way¹³ which was tried summarily¹⁴, the aggregate of the terms so imposed and any other terms imposed by the court may exceed six months but must not exceed 12 months¹⁵. The limitations imposed by these provisions do not operate to reduce the aggregate of the terms that the magistrates' court may impose in respect of any offences below the term which the court has power to impose in respect of any one of those offences¹⁶. Where a person has been sentenced by a magistrates' court to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine, or for want of sufficient distress (or, as from a day to be appointed, goods) to satisfy the fine, must not be subject to these limitations¹⁷.

Committal to custody for disobedience of an order of a magistrates' court to do anything other than the payment of money or abstain from doing anything is not a period of imprisonment nor may such committal orders be imposed consecutively¹⁸.

1 *Castro v R* (1881) 6 App Cas 229, HL; *R v Morriss* (1926) 19 Cr App Rep 75, CCA; *R v Greenberg (No 2)* [1943] KB 381, [1943] 1 All ER 504, CCA. For the restriction under the Criminal Justice Act 2003 s 265 on consecutive sentences being imposed on early-release prisoners who have been recalled to prison see PARA 30. As to delivery of judgment see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1356. Where several offences arise out of the same transaction, it is a good working rule that sentences imposed should be concurrent: *R v Kastercum* (1972) 56 Cr App Rep 298, CA; *R v Jones* (1980) 2 Cr App Rep (S) 152, CA. See also *R v Walsh* (1965) 109 Sol Jo 150, [1965] Crim LR 248, CCA; *R v Torr* [1966] 1 All ER 178, 50 Cr App Rep 73, CCA; *A-G's Reference (No 4 of 1994)* (1994) 16 Cr App Rep (S) 81, [1994] Crim LR 767, CA. However, an element of discretion is left to the court: *R v Lawrence (Justin)* (1990) 11 Cr App Rep (S) 580, [1990] RTR 45, CA (applied in *R v Jordan* [1996] 1 Cr App Rep (S) 181, [1996] RTR 221, CA); *R v Noble* [2002] EWCA Crim 1713,

[2003] 1 Cr App Rep (S) 312, [2003] RTR 4448. Where there are exceptional circumstances, a court may direct consecutive sentences for offences forming part of the same transaction: *R v Jones* (1980) 2 Cr App Rep (S) 152; *R v Wheatley* (1983) 5 Cr App Rep (S) 417, [1984] Crim LR 183, CA; *R v Dillon* (1983) 5 Cr App Rep (S) 439, [1984] Crim LR 183, CA; *R v Fletcher* [2002] EWCA Crim 834, [2002] 2 Cr App Rep (S) 127, [2002] Crim LR 591. Where an offender uses violence to escape arrest for another offence, the use of violence is not part of the same transaction as the original offence: *R v Kastercum*; *R v Fitter* (1983) 5 Cr App Rep (S) 168, CA; *R v Hill* (1983) 5 Cr App Rep (S) 214, CA. If, however, the assault is part and parcel of the substantive offence, it may be treated as aggravation of, and reflected in the sentence for, that offence; any sentence for the assault may then be concurrent: *R v Kastercum*; see also *R v Gormley* [1973] RTR 483, CA. A sentence should not be ordered to run partly concurrently and partly consecutively to an existing sentence: *R v Salmon* [2002] EWCA Crim 2088, [2003] 1 Cr App Rep (S) 441, CA. Consecutive sentences may be passed which in total substantially exceed the maximum for any one of the offences: *R v Blake* [1962] 2 QB 377, 45 Cr App Rep 292, CCA; *R v Britten* [1969] 1 All ER 517, 53 Cr App Rep 111, CA. When passing consecutive sentences, the court must ensure that the total sentence is not excessive: *R v Stevens* [1997] 2 Cr App Rep (S) 180, CA. See also *R v Bolingbroke* [2001] 1 Cr App Rep (S) 277, CA (consecutive sentences imposed for possession of indecent photographs of children and distribution of such photographs amounted to being charged twice for same activity; sentences replaced with concurrent sentences). Where a court passes on an offender more than one term of imprisonment, the court should state in the presence of the offender whether the terms are to be concurrent or consecutive: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.8, CA. Should this not be done the court clerk should ask the court, before the offender leaves the court, to do so: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.8.1, CA.

2 See *R v Fielder* (1926) 135 LT 64, 19 Cr App Rep 87, CCA.

3 *R v Greenberg (No 2)* [1943] KB 381, 29 Cr App Rep 51, CCA. It was said to be doubtful whether 'subsequent offence' includes an offence committed prior, but tried subsequently, to the offence for which sentence is being served (see *R v Fielder* (1926) 135 LT 64, 19 Cr App Rep 87, CCA), but it would seem that 'subsequent offence' means 'subsequent conviction of an offence', and it is immaterial when the two offences were committed (*R v Greenberg (No 2)*). A court has power to order a sentence for an offence tried subsequently to run concurrently with an existing sentence which is being served (see *R v Fielder*); and, if no specific direction is given, that is what happens. As to the meaning of 'subsequent offence' see also *Concentrated Foods Ltd v Champ* [1944] KB 342, [1944] 1 All ER 272, DC. If a prisoner is, at the time of sentence, already serving two or more consecutive terms of imprisonment and the court intends to increase the total period of imprisonment, it should use the expression 'consecutive to the total period of imprisonment to which you are already subject' rather than 'at the expiration of the term of imprisonment you are now serving', lest the prisoner be not then serving the last of the terms to which he is already subject: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.8.2, CA. As to the release of prisoners serving concurrent or consecutive terms of imprisonment see the Criminal Justice Act 2003 ss 263, 264, 264A; and **PRISONS**.

4 This principle is recognised by the Criminal Justice Act 2003 s 166(3)(b) (see PARA 624). It is not limited to cases where the same judge imposes all the sentences which are consecutive: *R v Jones* [1996] 1 Cr App Rep (S) 153, CA; *R v Stevens* [1997] 2 Cr App Rep (S) 180, CA. See also *R v Bocksei* (1970) 54 Cr App Rep 519, CA (activation of suspended sentence).

Where there is a series of offences, the proper course is to pass a sentence which each of the offences merits and make the sentences concurrent; it is wrong sentencing practice to pass short sentences and make them consecutive: *R v Dolby* (1989) 11 Cr App Rep (S) 335, CA.

5 See *R v Hills* [2008] EWCA Crim 1871, [2009] 1 Cr App Rep (S) 441, [2009] Crim LR 116. See also *R v Foy* [1962] 2 All ER 246, 46 Cr App Rep 290, CCA (a fixed-term of imprisonment may not be imposed to run consecutively to a sentence of life imprisonment), *R v Jones* [1962] AC 635 at 647 (affd on appeal on another point sub nom *Jones v DDP* [1962] AC 647, 46 Cr App Rep 129, HL) (although it is undesirable, a life sentence may be made consecutive to a fixed term of imprisonment) and *R v Bird* (2004) Times, 10 December, CA (there is no objection to imposing an extended sentence to run consecutively to a fixed-term one).

6 See eg *R v Stevens* [1997] 2 Cr App Rep (S) 180, CA; *R v Watts* [2000] 1 Cr App Rep (S) 460, CA. See also *R v Onabanjo* [2001] 2 Cr App Rep (S) 27, CA.

7 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

8 As to the meaning of 'impose imprisonment' see PARA 31 note 3. For these purposes a term of imprisonment is deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction or for want of sufficient distress (or, as from a day to be appointed, goods) to satisfy such a sum: Magistrates' Courts Act 1980 s 133(5) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 paras 45, 62). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment. Any reference to a sum adjudged to be paid by a conviction or order of a magistrates' court includes any costs, damages or compensation adjudged to be paid by the conviction or order of which the amount is ascertained by the

conviction or order: Magistrates' Courts Act 1980 s 150(3). The provisions of the Magistrates' Courts Act 1980 authorising a magistrates' court on conviction of an offender to pass a sentence or make an order instead of dealing with him in any other way must not be construed as taking away any power to order him to pay costs, damages or compensation: s 150(7).

9 See PARA 85.

10 Magistrates' Courts Act 1980 s 133(1) (amended by the Criminal Justice Act 1982 Sch 14 para 56; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 76; and by virtue of the Criminal Justice Act 1988 Sch 8 para 2). The Magistrates' Courts Act 1980 s 133(1) is expressed to be subject to the provisions of the Criminal Justice Act 2003 s 265 (restriction on consecutive sentences for released prisoners: see PARA 30), other than so far as relating to a sentence of imprisonment of less than 12 months: see the Magistrates' Courts Act 1980 s 133(1) (as so amended; further amended by the Criminal Justice Act 2003 Sch 32 paras 25, 30); and the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 14. The Magistrates' Courts Act 1980 s 133 also does not apply to the activation of a suspended sentence (*R v Chamberlain* (1991) 13 Cr App Rep (S) 525, 156 JP 440, CA).

11 Magistrates' Courts Act 1980 s 133(1) (as amended (see note 10); prospectively further amended by the Criminal Justice Act 2003 s 155(1), (2)). At the date at which this volume states the law no day had been appointed for the coming into force of the amendment made by the Criminal Justice Act 2003. This provision does not prevent the subsequent imposition of a term of imprisonment in default of payment of a fine consecutive to a six-month (or, as from a day to be appointed, 65 week) term which has already been imposed at the same time as the fine: *R v Metropolitan Stipendiary Magistrate for South Westminster, ex p Green* [1977] 1 All ER 353. Where the defendant is already undergoing imprisonment, the warrant of commitment for the subsequent offence must be delivered to the governor or keeper of the prison or place of detention in which he is detained: see the Magistrates' Courts Rules 1981, SI 1981/552, r 97(5).

12 As from a day to be appointed the Magistrates' Courts Act 1980 s 133(2) is repealed, and s 133(3) is amended, by the Criminal Justice Act 2003 s 155(1), (3), (4), Sch 37 Pt 7; and the Magistrates' Courts Act 1980 s 133(2A) is repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 58, 66, Sch 8. At the date at which this volume states the law no day had been appointed for the coming into force of any of these amendments.

13 As to the procedural classification of offences see **MAGISTRATES** vol 29(2) (Reissue) PARA 653 et seq.

14 In other than in pursuance of the Magistrates' Courts Act 1980 s 22(2): see **MAGISTRATES** vol 29(2) (Reissue) PARA 661.

15 Magistrates' Courts Act 1980 s 133(2) (prospectively repealed: see note 12). See *Re Forrest* [1981] AC 1038, sub nom *Forrest v Brighton Justices* [1981] 2 All ER 711, HL. Until a day to be appointed, in relation to the imposition of terms of detention in a young offender institution, the Magistrates' Courts Act 1980 s 133(2) has effect as if the reference to an offence triable either way were a reference to such an offence or an offence triable only on indictment: s 133(2A) (added by the Criminal Justice Act 1988 Sch 15 paras 65, 70; as so prospectively repealed).

16 Magistrates' Courts Act 1980 s 133(3) (prospectively amended (but not so as to affect the sense of the text): see note 12).

17 Magistrates' Courts Act 1980 s 133(4) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 paras 45, 62). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

18 *Head v Head* [1982] 3 All ER 14, [1982] 1 WLR 1186.

UPDATE

35 Concurrent and consecutive terms

NOTE 1--See also *R v Greaves* [2010] EWCA Crim 709, [2010] All ER (D) 299 (Mar) (acts done by defendants went beyond original conspiracy and should attract separate and additional, consecutive, sentences).

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36. Crediting of periods of remand in custody.

Where a court¹ sentences an offender to imprisonment² or detention³ for a term in respect of an offence committed on or after 4 April 2005⁴ and the offender has been remanded in custody⁵ in connection with the offence or a related offence (that is, any other offence the charge for which was founded on the same facts or evidence)⁶, the court must direct that the number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by him as part of the sentence⁷. However, this does not apply if and to the extent that:

- 125 (1) rules made by the Secretary of State so provide in the case of a remand in custody which is wholly or partly concurrent with a sentence of imprisonment⁸ or of sentences of imprisonment for consecutive terms or for terms which are wholly or partly concurrent⁹; or
- 126 (2) it is in the opinion of the court just in all the circumstances not to give such a direction¹⁰.

Where the court gives such a direction¹¹ it must state in open court¹²:

- 127 (a) the number of days for which the offender was remanded in custody¹³; and
- 128 (b) the number of days in relation to which the direction is given¹⁴.

Where the court does not give such a direction, or gives such a direction in relation to a number of days less than that for which the offender was remanded in custody, it must state in open court:

- 129 (i) that its decision is in accordance with rules made under head (1) above¹⁵; or
- 130 (ii) that it is of the opinion mentioned in head (2) above and what the circumstances are¹⁶.

The time during which an offender is released on bail by the Crown Court¹⁷ does not count as part of any term of imprisonment or detention under his sentence¹⁸ unless he is subject to a qualifying curfew condition¹⁹.

1 As to the meaning of 'court' see PARA 1 note 1.

2 For the purposes of the Criminal Justice Act 2003 ss 240, 240A, 241 (see the text and notes 3-16; and PARA 37), 'sentence of imprisonment' does not include a committal in default of payment of any sum of money other than one adjudged to be paid on a conviction, for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone (including, as from a day to be appointed, contempt of court or any kindred offence); and references to 'sentencing an offender to imprisonment', and to an offender's sentence, are to be read accordingly: Criminal Justice Act 2003 ss 242(1), 305(1) (s 242(1), (2) amended by the Criminal Justice and Immigration Act 2008 s 21(1), (6); Criminal Justice Act 2003 s 305(1) prospectively amended by the Police and Justice Act 2006 s 34(1), (6)). At the date at which this volume states the law no day had been appointed for the coming into force of the amendment effected by the Police and Justice Act 2006.

For these purposes a suspended sentence is to be treated as a sentence of imprisonment when it takes effect under the Criminal Justice Act 2003 Sch 12 para 8(2)(a) or Sch 12 para 8(2)(b) (see PARA 128) and is to be treated as being imposed by the order under which it takes effect: s 240(7).

3 The Criminal Justice Act 2003 s 240 (see the text and notes 4-16) applies to a determinate sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Criminal Justice Act 2003 s 228 (see PARA 84) or (until the date on which the Criminal Justice and Courts Service Act 2000 s 61 (see PARA 11) comes into force) a sentence of detention in a young offender institution under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (see PARA 85) or the Criminal Justice Act 2003 s 227 (see PARA 75): s 240(10) (amended by SI 2005/643).

4 Criminal Justice Act 2003 s 240(1)(a). 4 April 2005 is the date on which s 240 was brought into force: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 19. Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is taken to have been committed on the last of those days: Criminal Justice Act 2003 s 240(9).

5 References in the Criminal Justice Act 2003 ss 240, 240A, 241 (see the text and notes 6-16; and PARA 37) to an offender's being remanded in custody are references to his being:

- 29 (1) remanded in or committed to custody by order of a court (s 242(2)(a) (s 242(2) as amended: see note 2));
- 30 (2) remanded or committed to local authority accommodation under the Children and Young Persons Act 1969 s 23 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1247-1248) and kept in secure accommodation or detained in a secure training centre pursuant to arrangements under s 23(7A) (Criminal Justice Act 2003 s 242(2)(b)); or
- 31 (3) remanded, admitted or removed to hospital under the Mental Health Act 1983 s 35, s 36 or s 38 (see PARAS 334-336) or s 48 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1262) (Criminal Justice Act 2003 s 242(2)(c)).

For these purposes 'secure accommodation' has the same meaning as in the Children and Young Persons Act 1969 s 23 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1247): Criminal Justice Act 2003 s 242(3).

6 Criminal Justice Act 2003 s 240(1)(b).

7 Criminal Justice Act 2003 s 240(3). For this purpose it is immaterial whether the offender has also been remanded in custody in connection with other offences or has also been detained in connection with other matters: s 240(2). For guidelines see *R v Norman* [2006] EWCA Crim 1792, [2007] 1 Cr App Rep (S) 509, [2006] All ER (D) 278 (Jul); *R v Gordon* [2007] EWCA Crim 165, [2007] 2 All ER 768, [2007] 2 Cr App Rep (S) 400; *R v Metcalfe* [2009] EWCA Crim 374, [2009] 2 Cr App Rep (S) 586, [2009] Crim LR 461; *R v Nnaji* [2009] EWCA Crim 468, [2009] 2 Cr App Rep (S) 107; and the Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) paras 1.1.37-1.1.40, Annex A.

For the purposes of the reference to 'the sentence' in the Criminal Justice Act 2003 s 240(3), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if either the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under Pt 12 Ch 6 (ss 237-268) (see **PRISONS**) at any time during the period beginning with the first and ending with the last of those occasions: s 240(8).

In the case of an extradited prisoner, s 240 has effect as if the days for which he was kept in custody while awaiting extradition were days for which he was remanded in custody in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence: s 243(1) (amended by the Police and Justice Act 2006 Sch 13 para 31). A fixed-term prisoner is an 'extradited prisoner' for this purpose if he was tried for the offence in respect of which his sentence was imposed or he received that sentence after having been extradited to the United Kingdom and without having first been restored or had an opportunity of leaving the United Kingdom, and he was for any period kept in custody while awaiting such extradition: Criminal Justice Act 2003 s 243(2). Section 243 does not apply in the case of an extradited prisoner where the offence referred to in s 243(1) was committed before 4 April 2005: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 17.

If, in an appropriate case, the judge fails to give a direction pursuant to the Criminal Justice Act 2003 s 240(3), counsel for the prosecution or the defence should seek variation of the sentence within 56 days: see the Powers of Criminal Courts (Sentencing) Act 2000 s 155; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1357. Non-direction under the Criminal Justice Act 2003 s 240(3) will not usually amount to a ground of appeal where the sentence passed was otherwise appropriate. It is important that the Crown Court is provided with accurate information as to time served on remand in order to carry out its obligation under s 240(3): see *R v Oosthuizen* [2005] EWCA Crim 1978, [2006] 1 Cr App Rep (S) 385, [2005] Crim LR 979.

As to the effect of a direction under the Criminal Justice Act 2003 s 240 on release on licence see s 241; and **PRISONS**. As to the effect of a direction under s 240 in relation to a prisoner who was tried after extradition to the United Kingdom see s 243; and **PRISONS**.

8 Criminal Justice Act 2003 s 240(4)(a)(i). See the Remand in Custody (Effect of Concurrent and Consecutive Sentences of Imprisonment) Rules 2005, SI 2005/2054, r 2, which provides that the Criminal Justice Act 2003 s 240(3) (see the text and notes 1-7) does not apply in relation to a day for which an offender was remanded in custody:

- 32 (1) if on that day he was serving a sentence of imprisonment (and it was not a day on which he was on licence under Pt 12 Ch 6 (see **PRISONS**) or the Criminal Justice Act 1991 Pt 2 (ss 32-51) (repealed other than in relation to sentences of imprisonment of less than 12 months or imposed in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 paras 14, 19(c), 20; and **PRISONS**); or
- 33 (2) where the term of imprisonment referred to in the Criminal Justice Act 2003 s 240(1) (see the text and notes 1-7) is ordered to be served consecutively on another term of imprisonment, if the length of that other term falls to be reduced by the same day by virtue of the Criminal Justice Act 1967 s 67 (repealed).

9 Criminal Justice Act 2003 s 240(4)(a)(ii). See note 8.

10 Criminal Justice Act 2003 s 240(4)(b). Where a judge is considering not making a direction under s 240(3) he should give defence counsel an opportunity of addressing the court: *R v Barber* [2006] EWCA Crim 162, [2006] 2 Cr App Rep (S) 539, (2006) Times, 4 April. See also *R v Vaughan* [2008] EWCA Crim 1613, [2009] 1 Cr App Rep (S) 365 (defendant's refusal to admit guilt during the period in question did not justify withholding a direction under the Criminal Justice Act 2003 s 240).

11 I.e. a direction under the Criminal Justice Act 2003 s 240(3): see the text and notes 1-7.

12 As to the meaning of 'open court' see PARA 23 note 3.

13 Criminal Justice Act 2003 s 240(5)(a).

14 Criminal Justice Act 2003 s 240(5)(b).

15 Criminal Justice Act 2003 s 240(6)(a).

16 Criminal Justice Act 2003 s 240(6)(b).

17 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1187-1188.

18 See the Senior Courts Act 1981 s 81(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1187. The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981 and was renamed by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 as from 1 October 2009: see the Constitutional Reform Act 2005 (Commencement No 11) Order 2009, SI 2009/1604; and **COURTS**.

19 See the Criminal Justice Act 2003 s 240A; and PARA 37.

UPDATE

36 Crediting of periods of remand in custody

NOTE 7--See also *R v Irving*; *R v Squires* (2010) Times, 20 February, CA (guidance for avoiding errors in calculating credit for offenders who had spent on bail subject to a qualifying curfew condition or an electronic monitoring condition).

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37. Crediting of periods of remand on bail.

Where a court¹ sentences an offender to imprisonment² or detention³ for a term in respect of an offence committed on or after 4 April 2005⁴, the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence⁵, after 3 November 2008⁶, and the offender's bail was subject to a qualifying curfew condition⁷ and an electronic monitoring condition⁸ (the 'relevant conditions')⁹, the court must direct that the 'credit period'¹⁰ is to count as time served by him as part of the sentence¹¹. However, this does not apply if and to the extent that:

- 131 (1) rules made by the Secretary of State so provide¹²; or
- 132 (2) it is in the opinion of the court just in all the circumstances not to give such a direction¹³,

and where as a result of these provisions¹⁴ the court does not give a direction¹⁵, it may give a direction in accordance with either of those provisions to the effect that a period of days which is less than the credit period is to count as time served by the offender as part of the sentence¹⁶.

Where the court gives a direction¹⁷ it must state in open court¹⁸:

- 133 (a) the number of days for which the offender was subject to the relevant conditions¹⁹; and
- 134 (b) the number of days in relation to which the direction is given²⁰.

Where the court does not give a direction that the credit period is to count as time served²¹ but gives a direction²² to the effect that a lesser period is to count, or decides not to give a direction, it must state in open court:

- 135 (i) that its decision is in accordance with rules made under head (1) above²³; or
- 136 (ii) that it is of the opinion mentioned in head (2) above and what the circumstances are²⁴.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the meaning of 'sentence of imprisonment' see PARA 36 note 2. For these purposes a suspended sentence (including a sentence to which an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 118(1) (repealed) relates) is to be treated as a sentence of imprisonment when it takes effect under the Criminal Justice Act 2003 Sch 12 para 8(2)(a) or Sch 12 para 8(2)(b) (see PARA 128) or the Powers of Criminal Courts (Sentencing) Act 2000 s 119(1)(a) or (b) (repealed), and is to be treated as being imposed by the order under which it takes effect: Criminal Justice Act 2003 ss 240(7), 240A(11)(a) (s 240A added by the Criminal Justice and Immigration Act 2008 s 21(1), (4), subject to transitional provisions in relation to the continuing effect of certain repealed provisions (see s 23, Sch 6, which makes provision for offences committed before 4 April 2005 in respect of which the defendant was on bail subject to curfew after 3 November 2008 (see the Criminal Justice and Immigration Act 2008 (Commencement No 3 and Transitional Provisions) Order 2008, SI 2008/2712)).

3 The Criminal Justice Act 2003 s 240A (see the text and notes 4-24) applies to a determinate sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Criminal Justice Act 2003 s 228 (see PARA 84) or (until the date on which the Criminal Justice and Courts Service Act 2000 s 61

(see PARA 11) comes into force) a sentence of detention in a young offender institution under the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (see PARA 85) or the Criminal Justice Act 2003 s 227 (see PARA 75): ss 240(10), 240A(11) (s 240(10) amended by SI 2005/643; Criminal Justice Act 2003 s 240A as added (see note 2)).

4 Criminal Justice Act 2003 s 240A(1)(a) (as added: see note 2). 4 April 2005 is the date on which s 240 (see PARA 36) and other relevant provisions of the Criminal Justice Act 2003 were brought into force: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 19. Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is taken to have been committed on the last of those days: Criminal Justice Act 2003 ss 240(9), 240A(11) (s 240A(11) as so added).

5 'Related offence' means an offence, other than the offence for which the sentence is imposed ('offence A'), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A: Criminal Justice Act 2003 s 240A(12) (as added: see note 2).

6 Criminal Justice Act 2003 s 240A(1)(b) (as added: see note 2). 3 November 2008 is the date on which the Criminal Justice and Immigration Act 2008 s 21 (see note 2) was brought into force by virtue of the Criminal Justice and Immigration Act 2008 (Commencement No 3 and Transitional Provisions) Order 2008, SI 2008/2712. It has been held that the Criminal Justice Act 2003 s 240A does not apply to a period on bail prior to 3 November 2008; but if a defendant was remanded on bail before 3 November 2008 subject to what were to become the relevant conditions on 3 November 2008 and continued to be on bail for a period on or after that date subject to those conditions without a further court order, s 240A does apply to the period on or after that date: see *R v Monaghan* [2009] EWCA Crim 2699, [2009] All ER (D) 225 (Dec).

7 'Qualifying curfew condition' means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day: Criminal Justice Act 2003 s 240A(12) (as added: see note 2). See *R v Barrett* [2009] EWCA Crim 2213, (2009) Times, 5 October, [2009] All ER (D) 40 (Sep).

8 'Electronic monitoring condition' means any electronic monitoring requirements imposed under the Bail Act 1976 s 3(6ZAA) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1167) for the purpose of securing the electronic monitoring of a person's compliance with a qualifying curfew condition: Criminal Justice Act 2003 s 240A(12) (as added: see note 2).

9 Criminal Justice Act 2003 s 240A(1)(c) (as added: see note 2). In connection with the conditions see *R v Barrett* [2009] EWCA Crim 2213, (2009) Times, 5 October, [2009] All ER (D) 40 (Sep).

10 The number of days represented by half of the sum of the day on which the offender's bail was first subject to conditions that, had they applied throughout the day in question, would have been relevant conditions, and the number of other days on which the offender's bail was subject to those conditions (excluding the last day on which it was so subject), rounded up to the nearest whole number: Criminal Justice Act 2003 s 240A(3) (as added: see note 2).

11 Criminal Justice Act 2003 s 240A(2) (as added: see note 2). For the purposes of the reference to 'the sentence' in s 240A(2), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if either the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under the Criminal Justice Act 1991 Pt 2 (ss 32-51) (repealed other than in relation to sentences of imprisonment of less than 12 months or imposed in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 paras 14, 19(c), 20; and **PRISONS**) at any time during the period beginning with the first and ending with the last of those occasions: Criminal Justice Act 2003 ss 240(8), 240A(11)(b) (as so added).

If, in an appropriate case, the judge fails to give a direction pursuant to s 240A(2), counsel for the prosecution or the defence should seek variation of the sentence within 56 days: see the Powers of Criminal Courts (Sentencing) Act 2000 s 155; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1357. Non-direction under the Criminal Justice Act 2003 s 240A(2) will not usually amount to a ground of appeal where the sentence passed was otherwise appropriate. It is important that the Crown Court is provided with accurate information as to time served on bail in order to carry out its obligation under s 240A(2): *R v Oosthuizen* [2005] EWCA Crim 1978, [2006] 1 Cr App Rep (S) 385, [2005] Crim LR 979 (decided under the Criminal Justice Act 2003 ss 240: see PARA 36).

As to the effect of a direction under the Criminal Justice Act 2003 s 240A on release on licence see s 241; and **PRISONS**.

12 Criminal Justice Act 2003 s 240A(4)(a) (as added: see note 2). See the Remand on Bail (Disapplication of Credit Period) Rules 2008, SI 2008/2793, which provide that:

- 34 (1) where the Criminal Justice Act 2003 s 240A or the Criminal Justice and Immigration Act 2008 Sch 6 para 2 (transitional provisions: see note 2) applies and the term of imprisonment referred to in the Criminal Justice Act 2003 s 240A(1)(a) (see the text and notes 1-4) or the Criminal Justice and Immigration Act 2008 Sch 6 para 2(1)(a) is ordered to be served consecutively on, or wholly or partly concurrently with, another term of imprisonment ('the other term'), the Criminal Justice Act 2003 240A(2) (see the text and notes 1-11) and the Criminal Justice and Immigration Act 2008 Sch 6 para 2(2) do not apply in relation to any day on which the offender's bail was subject to the relevant conditions and which has been counted for the purposes of the Criminal Justice Act 2003 240A(3)(a) or (b) (see the text and note 10) or the Criminal Justice and Immigration Act 2008 Sch 6 para 2(3)(a) or (b) in relation to the other term (Remand on Bail (Disapplication of Credit Period) Rules 2008, SI 2008/2793, r 2);
- 35 (2) where the Criminal Justice Act 2003 s 240A or the Criminal Justice and Immigration Act 2008 Sch 6 para 2 applies and on a day when the offender's bail was subject to the relevant conditions, the offender was also subject to requirements imposed for the purpose of securing the electronic monitoring of the offender's compliance with:
7. (a) a curfew condition imposed under the Criminal Justice Act 2003 s 250(5) (requirement for early release under s 246 to include a curfew condition: see **PRISONS**) or the Criminal Justice Act 1991 s 37A (requirement for early release under s 34A to include a curfew condition (repealed other than in relation to sentences of imprisonment of less than 12 months: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 14; and **PRISONS**));
7
 8. (b) a requirement imposed under the Powers of Criminal Courts (Sentencing) Act 2000 103(6) (requirements of supervision under a detention and training order: see PARA 92) to remain at one or more specified places for a specified number of hours in any given day during the period beginning on the day on which the offender is released early from detention and training under s 102(4) (early release from a detention and training order: see PARA 91) and ending on the halfway point of the term of the detention and training order;
8
 9. (c) a licence condition imposed following early release from prison under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237-268) or the Criminal Justice Act 1991 Pt 2 (ss 32-51) (repealed other than in relation to sentences of imprisonment of less than 12 months or imposed in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 paras 14, 19(c), 20; and **PRISONS**);
9
 10. (d) a curfew requirement, as defined by the Criminal Justice Act 2003 s 204 (curfew requirement: see PARA 275), imposed as part of a suspended sentence order, as defined by s 189(7) (suspended sentences of imprisonment: see PARA 110), or as part of a community order, as defined by s 177 (community orders: see PARA 163);
10
 11. (e) a curfew order imposed under the Powers of Criminal Courts (Sentencing) Act 2000 s 37(1) (curfew orders for persons aged under 16: see PARA 231); or
11
 12. (f) any other requirement to remain at one or more specified places for a specified number of hours in any given day, provided that the requirement is imposed by a court or the Secretary of State and arises as a result of a conviction,
12
- the Criminal Justice Act 2003 s 240A(2) and the Criminal Justice and Immigration Act 2008 Sch 6 para 2(2) do not apply (Remand on Bail (Disapplication of Credit Period) Rules 2008, SI 2008/2793, r 3); and
- 36 (3) where the Criminal Justice Act 2003 s 240A or the Criminal Justice and Immigration Act 2008 Sch 6 para 2 applies and on a day when the offender's bail was subject to the relevant conditions, the offender was also on temporary release under the Prison Rules 1999, SI 1999/728, r 9 (see **PRISONS** vol 36(2) (Reissue) PARA 612), the Young Offender Institution Rules 2000, SI 2000/3371, r 5 (see **PRISONS**) or the Secure Training Centre Rules 1998, SI 1998/472, r 5 (see **PRISONS** vol 36(2) (Reissue) PARA 678), the Criminal Justice Act 2003 s 240A or the Criminal Justice and Immigration Act 2008 Sch 6 para 2 does not apply (Remand on Bail (Disapplication of Credit Period) Rules 2008, SI 2008/2793, r 4).
- It is provided that rules made under this provision may, in particular, make provision in relation to:
- 37 (i) sentences of imprisonment for consecutive terms (Criminal Justice Act 2003 s 240A(6)(a) (as so added));

- 38 (ii) sentences of imprisonment for terms which are wholly or partly concurrent (s 240A(6)(b) (as so added)); and
- 39 (iii) periods during which a person granted bail subject to the relevant conditions is also subject to electronic monitoring required by an order made by a court or the Secretary of State (s 240A(6)(c) (as so added)).

13 Criminal Justice Act 2003 s 240A(4)(b) (as added: see note 2). Where a judge is considering not making a direction under s 240A(4) he should give defence counsel an opportunity of addressing the court: *R v Barber* [2006] EWCA Crim 162, [2006] 2 Cr App Rep (S) 539, (2006) Times, 4 April (decided under the Criminal Justice Act 2003 ss 240: see PARA 36). See also *R v Vaughan* (defendant's refusal to admit guilt during the period in question does not justify withholding a s 240A direction).

14 Ie the Criminal Justice Act 2003 s 240A(4)(a) or (b): see the text and notes 12-13.

15 Ie a direction under the Criminal Justice Act 2003 s 240A(2): see the text and notes 1-11.

16 Criminal Justice Act 2003 s 240A(5) (as added: see note 2).

17 Ie a direction under the Criminal Justice Act 2003 s 240A(2) or (5): see the text and notes 1-11, 16.

18 As to the meaning of 'open court' see PARA 23 note 3.

19 Criminal Justice Act 2003 s 240A(8)(a) (as added: see note 2).

20 Criminal Justice Act 2003 s 240A(8)(b) (as added: see note 2).

21 Ie a direction under the Criminal Justice Act 2003 s 240A(2): see the text and notes 1-11.

22 Ie a direction under the Criminal Justice Act 2003 s 240A(5): see the text and note 16.

23 Criminal Justice Act 2003 s 240A(9), (10)(a) (as added: see note 2).

24 Criminal Justice Act 2003 s 240A(10)(b) (as added: see note 2).

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38. Reduction of sentence to account for periods of pre-trial detention.

The length of any sentence of imprisonment or detention¹ imposed on an offender by a court in respect of an offence committed before 4 April 2005² is treated as reduced by any relevant pre-trial detention period³, although where he was previously subject to a probation order, a community service order, an order for conditional discharge⁴ or a suspended sentence⁵ in respect of that offence, any such period falling before the order was made or suspended sentence passed must be disregarded for these purposes⁶.

No period of custody, other than a period which would have been taken into account⁷ before 1 October 1967⁸ for the purpose of reducing a term of imprisonment, may be taken into account for the like purpose under these provisions unless it falls after that date⁹.

1 The Criminal Justice Act 1967 s 67 (see the text and notes 2-9) applies to determinate sentences of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) and sentences of detention in a young offender institution (see PARA 85) as they apply to sentences of imprisonment: Criminal Justice Act 1967 s 67(5) (added by the Criminal Justice Act 1982 s 10; substituted by the Criminal Justice Act 1991 Sch 11 para 2; amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 25; repealed with savings (see note 2)).

For these purposes a suspended sentence is treated as a sentence of imprisonment when it takes effect under the Powers of Criminal Courts (Sentencing) Act 2000 s 119 and as being imposed by the order under which it takes effect: Criminal Justice Act 1967 s 67(2) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 25; as so repealed with savings). Where an offender has been sentenced to imprisonment with an order under the Criminal Law Act 1977 s 47(1) (repealed) and has been released from prison after serving part of his sentence, and an order is subsequently made restoring part of his sentence, the restored part is treated for these purposes as a sentence of imprisonment imposed by the order restoring it (but must not be reduced by any period spent in custody by the offender before the original sentence was passed): Criminal Justice Act 1967 s 67(2B) (added by the Criminal Justice Act 1982 Sch 14 para 22; as so repealed with savings).

Unless the context otherwise requires any reference to the length of any sentence of imprisonment is construed as a reference to the sentence pronounced by the court and not the sentence as reduced by these provisions: Criminal Justice Act 1967 s 67(4) (as so repealed with savings).

2 The Criminal Justice Act 1967 s 67 (see the text and notes 3-14) was repealed as from 4 April 2005 by the Crime (Sentences) Act 1997 Sch 6, other than in relation to a case in which a court has imposed a sentence of imprisonment in respect of an offence committed before 4 April 2005 (whether or not it has also imposed a sentence of imprisonment in respect of an offence committed after that date) (see the Crime (Sentences) Act 1997 (Commencement No 4) Order 2005, SI 2005/932, art 2).

3 I.e., by virtue of the Criminal Justice Act 1967 s 67(1A) (added by the Police and Criminal Evidence Act 1984 s 49; amended by the Criminal Justice Act 1988 s 130; the Children Act 1989 Sch 13 para 16; and the Criminal Justice Act 1991 Sch 11 para 2; repealed with savings (see note 2)):

- 40 (1) any period during which the offender was in police detention in connection with the offence for which the sentence was passed;
- 41 (2) any period during which he was in custody by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose, or by reason of his having been so committed and having been concurrently detained otherwise than by order of a court; or
- 42 (3) any period during which, in connection with the offence for which the sentence was passed, he was remanded or committed to local authority accommodation by virtue of an order under the Children and Young Persons Act 1969 s 23 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1247-1248) or the Magistrates' Courts Act 1980 s 37 (repealed) and in

accommodation provided for the purpose of restricting liberty (in this regard see also *R v Secretary of State for the Home Department, ex p A* [2000] 2 Cr App Rep (S) 263, HL).

The reference in the Criminal Justice Act 1967 s 67(1A) to an offender being committed to custody (see head (2) above) by an order of a court includes a reference to his being committed to prison (or, until a day to be appointed, a remand centre) under the Magistrates' Courts Act 1980 s 37 (repealed) but does not include a reference to his being remanded or committed to local authority accommodation under the Children and Young Persons Act 1969 s 23 (see head (3) above): Criminal Justice Act 1967 s 67(6) (added by the Criminal Justice Act 1982 s 11; amended by the Criminal Justice Act 1988 Sch 15 paras 17, 19; the Criminal Justice Act 1991 Sch 11 para 2, Sch 13; prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 34, 36, Sch 8; as so repealed with savings). At the date at which this volume states the law no day had been appointed for the coming into force of the amendment effected by the Criminal Justice and Court Services Act 2000.

A person is 'in police detention' for these purposes at any time when he is in police detention for the purposes of the Police and Criminal Evidence Act 1984 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 939) and at any time when he is detained under the Terrorism Act 2000 s 41 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 420): Criminal Justice Act 1967 s 67(7) (added by the Police and Criminal Evidence Act 1984 s 49; amended by the Terrorism Act 2000 Sch 15 para 1; as so repealed with savings). No period of police detention is to be taken into account under these provisions unless it falls after 1 January 1986 (ie the date on which the Police and Criminal Evidence Act 1984 s 49 (see above) was brought into force by the Police and Criminal Evidence Act 1984 (Commencement No 3) Order 1985, SI 1985/1934): Criminal Justice Act 1967 s 67(8) (added by the Police and Criminal Evidence Act 1984 s 49; as so repealed with savings).

4 See PARA 40.

5 See PARA 110.

6 Criminal Justice Act 1967 s 67(1) (amended by the Police and Criminal Evidence Act 1984 s 49 and the Criminal Justice Act 1982 Schs 5, 16; repealed with savings (see note 2)).

7 Ie under the Criminal Justice Administration Act 1962 s 17(2) (repealed).

8 Ie the date on which the Criminal Justice Act 1967 s 67 was brought into force by the Criminal Justice Act 1967 (Commencement No 1) Order 1967, SI 1967/1234.

9 Criminal Justice Act 1967 s 67(2B) (added by the Criminal Justice Act 1982 Sch 14 para 22; repealed with savings (see note 2)).

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39. Mitigation by magistrates.

Where under any enactment¹ a magistrates' court² has power to sentence an offender to imprisonment for a period specified by the enactment, then, except where an Act passed after 31 December 1879 expressly provides to the contrary, the court may sentence him to imprisonment for less than that period³. Where under any such enactment an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognisance⁴ with or without sureties to keep the peace or observe any other condition, the court convicting him may dispense with or modify the requirement⁵.

1 le any enactment whether passed before or after 6 July 1981 (ie the commencement of the Magistrates' Courts Act 1980: see the Magistrates' Courts Act 1980 (Commencement) Order 1981, SI 1981/457).

2 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

3 Magistrates' Courts Act 1980 s 34(1). As to mitigation of fines see PARA 148.

4 As to recognisances see PARAS 151-157.

5 Magistrates' Courts Act 1980 s 34(2).

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(5) DISCHARGE

40. Absolute and conditional discharge.

A court¹ by or before which a person is convicted of an offence² may, if it is of the opinion, having regard to the circumstances, including the nature of the offence and character of the offender, that it is inexpedient to inflict punishment³, make an order:

- 137 (1) discharging the offender absolutely⁴; or
- 138 (2) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified therein⁵,

although this power is not available in respect of an offence the sentence for which is:

- 139 (a) a sentence fixed by law⁶;
- 140 (b) a life sentence for public protection⁷;
- 141 (c) the required custodial sentence for possession of a firearm or using a person to mind a weapon⁸;
- 142 (d) the specified minimum term for a third class A drug trafficking offence⁹; or
- 143 (e) the specified minimum term for a third domestic burglary¹⁰.

The court may also make an order for the absolute discharge of an accused where:

- 144 (i) a special verdict of not guilty by reason of insanity¹¹ is returned¹²; or
- 145 (ii) findings have been made that the defendant is under a disability and that he did the act or omission charged against him¹³.

On discharging an offender absolutely or conditionally, an order for costs or compensation, a restitution order or a deprivation order may be made¹⁴; and the court may in the case of a discretionary disqualification, and must in the case of an obligatory disqualification, exercise its powers to disqualify¹⁵.

On making an order for conditional discharge, the court may, if it thinks it expedient for the purposes of the offender's reformation, allow any person who consents to do so to give security for the offender's good behaviour¹⁶.

1 As to the meaning of 'court' see PARA 1 note 1.

2 In relation to the making of an order of absolute discharge under the Criminal Procedure (Insanity) Act 1964 s 5(2)(c) (see PARA 332), the Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (see the text and notes 3-10) has effect as if the reference to a person being convicted by or before a court of such an offence as is there mentioned included a reference to the case where the Criminal Procedure (Insanity) Act 1964 s 5 applies: s 5A(6)(a) (s 5A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1)).

3 In relation to the making of an order of absolute discharge under the Criminal Procedure (Insanity) Act 1964 s 5(2)(c) (see PARA 332), the Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) has effect as if the reference to the court being of opinion that it is inexpedient to inflict punishment included a reference to it

thinking that an order for absolute discharge would be most suitable in all the circumstances of the case: Criminal Procedure (Insanity) Act 1964 s 5A(6)(b) (as added: see note 2).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1)(a). See eg *Willcock v Muckle* [1951] 2 KB 844, [1951] 2 All ER 367, DC (court emphatically approved the granting of an absolute discharge by magistrates' court).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1)(b). This is subject to the Crime and Disorder Act 1998 s 66(4) (effects of reprimands and warnings on young offenders: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1236); Powers of Criminal Courts (Sentencing) Act 2000 s 12(2). For these purposes, an 'order for conditional discharge' means an order under head (2) in the text; and the 'period of conditional discharge' means the period specified in any such order: s 12(3). The Secretary of State may by order direct that s 12(1) be amended by substituting, for the maximum period there specified as originally enacted or as previously amended, such period as may be specified in the order: s 15(1). At the date at which this volume states the law no such order had been made.

Where a person conditionally discharged is sentenced for the offence in respect of which the order for conditional discharge was made, the order ceases to have effect: s 12(5). An absolute or conditional discharge may be coupled with a recommendation for deportation: see the Immigration Act 1971 s 6(3); *R v Akan* [1973] QB 491, 56 Cr App Rep 716, CA; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 160. A discharge may not be combined with a fine for the same offence: *R v Sanck* (1990) 12 Cr App Rep (S) 155, CA. There are a number of sentence combinations which are specifically permitted by statute, either the Powers of Criminal Courts (Sentencing) Act 2000 s 12(7) (see the text and note 14) or otherwise: see *R v Clarke* [2009] EWCA Crim 1074, [2009] 4 All ER 298.

Where an order for conditional discharge is made on appeal, the order is deemed to have been made by the court from which the appeal was brought: Powers of Criminal Courts (Sentencing) Act 2000 s 15(2).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 93(a), 124; the Violent Crime Reduction Act 2006 Sch 1 para 6; and the Criminal Justice and Immigration Act 2008 Sch 26 paras 40, 41). As to sentences fixed by law see PARA 15.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (as amended: see note 6). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 4.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (as amended: see note 6). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (as amended: see note 6). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 12(1) (as amended: see note 6). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

11 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

12 Criminal Procedure (Insanity) Act 1964 s 5(1)(a), (2)(c) (s 5 substituted by the Domestic Violence, Crime and Victims Act 2004 s 24(1)).

13 Criminal Procedure (Insanity) Act 1964 s 5(1)(b) (as substituted: see note 12). As to such findings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 12(7). As to orders for costs and compensation orders see PARA 375 et seq; as to deprivation orders see PARA 480 et seq; and as to restitution orders see PARAS 388-389. See also *R v Clarke* [2009] EWCA Crim 1074, [2009] 4 All ER 298.

15 Powers of Criminal Courts (Sentencing) Act 2000 s 12(7).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 12(6).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS/(5) DISCHARGE/41. Effects of discharge.

41. Effects of discharge.

A conviction of an offence for which an order is made discharging the offender absolutely or conditionally¹ is deemed not to be a conviction² for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken³ against him⁴; but where the offender was aged 18 or over⁵ at the time of his conviction of the offence in question and is subsequently sentenced for the offence⁶, this exemption ceases to apply to that conviction⁷.

Except as otherwise provided, a conviction of an offence for which an order is made discharging the offender absolutely or conditionally is in any event disregarded for the purposes of any enactment⁸ or instrument⁹ which imposes any disqualification or disability¹⁰ upon convicted persons¹¹, or authorises or requires the imposition of any such disqualification or disability¹².

These provisions do not affect any right of any offender discharged absolutely or conditionally to rely on his conviction in bar of any subsequent proceedings for the same offence¹³, or the restoration of any property in consequence of the conviction of any such offender¹⁴.

¹ See PARA 40.

² A conviction for which an order is made discharging the offender is treated as a conviction for the purposes of the Rehabilitation of Offenders Act 1974: see PARA 660 note 3. A conviction in respect of which the court has ordered disqualification or endorsement of a driving licence must be taken into account in determining liability to punishment or disqualification for any subsequent motoring offence: see PARAS 313-314.

³ Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 13 (see PARAS 42-43).

⁴ Powers of Criminal Courts (Sentencing) Act 2000 s 14(1). See also *Cassidy v Cassidy* [1959] 3 All ER 187, [1959] 1 WLR 1024, DC; *R v Clarke* [2009] EWCA Crim 1074, [2009] 4 All ER 298. This is in contrast to the position where the offender is made subject to a 'common law bind over': see PARA 151 text and note 7. The Powers of Criminal Courts (Sentencing) Act 2000 s 14(1) has effect subject to the Criminal Appeal Act 1968 s 50(1A) (added by the Criminal Justice Act 1982 s 66; amended by the Criminal Justice Act 1991 Sch 11 para 4, Sch 13; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 30) (which provides that s 14 does not prevent an appeal under the Criminal Appeal Act 1968, whether against conviction or otherwise) and the Magistrates' Courts Act 1980 s 108(1A) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1980) (rights of appeal); and the Powers of Criminal Courts (Sentencing) Act 2000 s 14(6) is not to be taken to prejudice any other enactment that excludes the effect of s 14(1) or s 14(3) (see the text and notes 8-12) for particular purposes (s 14(6)).

⁵ As to the determination of a person's age for these purposes see PARA 27.

⁶ Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 13 (see PARAS 42-43).

⁷ Powers of Criminal Courts (Sentencing) Act 2000 s 14(2). The conviction is at the date of the making of an order, not at that of the subsequent passing of sentence: *R v Thomas* (1962) 46 Cr App Rep 466, CA.

⁸ For these purposes, 'enactment' includes an enactment contained in a local Act: Powers of Criminal Courts (Sentencing) Act 2000 s 14(5).

⁹ For these purposes, 'instrument' means an instrument having effect by virtue of an Act: Powers of Criminal Courts (Sentencing) Act 2000 s 14(5).

¹⁰ A recommendation for deportation is not a disqualification or disability: *R v Akan* [1973] QB 491, [1972] 3 All ER 285, CA. See also *R v Secretary of State for the Home Department, ex p Thornton* [1987] QB 36, [1986] 2 All ER 641, CA (punishments under the Police Discipline Regulations 1977, SI 1977/580, reg 22 (revoked),

including dismissal of officer or requirement that he resign, did not amount to imposition of disqualification or disability).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 14(3)(a). This does not prevent a disciplinary tribunal from hearing a complaint based on the matters which formed the basis of the conviction: *R v Statutory Committee of the Pharmaceutical Society of Great Britain, ex p Pharmaceutical Society of Great Britain* [1981] 2 All ER 805, [1981] 1 WLR 886, DC. As to disqualification on conviction see PARA 313 et seq.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 14(3)(b). See note 11.

13 Powers of Criminal Courts (Sentencing) Act 2000 s 14(4)(a).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 14(4)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS/(5) DISCHARGE/42. Commission of offence by person subject to order for conditional discharge.

42. Commission of offence by person subject to order for conditional discharge.

If it appears to the Crown Court, where that court has jurisdiction, or to a justice of the peace having jurisdiction, that a person in whose case an order for conditional discharge has been made has been convicted by a court¹ in any part of Great Britain of an offence committed during the period of conditional discharge², and has been dealt with in respect of that offence³, the Crown Court or the justice may issue a summons requiring the person to appear at the place and time specified therein or a warrant for his arrest⁴. A justice of the peace may not so issue a summons except on information and may not so issue a warrant except on information in writing and on oath⁵. A summons or warrant so issued must direct the person to whom it relates to appear or be brought before the court by which the order for conditional discharge was made⁶.

If a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court may commit him to custody or release him on bail until he can appear or be brought before the Crown Court⁷; and, if it does so, the magistrates' court must send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the designated officer by whom the register is kept⁸.

1 As to the meaning of 'court' see PARA 1 note 1.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 13(1)(a). As to the period of conditional discharge see PARA 40.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 13(1)(b).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 13(1). For these purposes, jurisdiction may be exercised: (1) if the order was made by the Crown Court, by that court (s 13(2)(a)); and (2) if the order was made by a magistrates' court, by a justice of the peace (s 13(2)(b) (amended by SI 2005/886)).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 13(3).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 13(4). An order made on appeal is deemed to have been made by the court from which the appeal was brought: see PARA 40 note 5.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 13(5)(a). If the offender is so committed he should be committed as follows. He should be committed to the location of the Crown Court where the order was made unless it was inconvenient or impracticable to do so. If he is not so committed and the order was made by a High Court judge, he should be committed to the most convenient location of the Crown Court where a High Court judge regularly sits. In all other cases he should be committed to the most convenient location of the Crown Court. In selecting the most convenient location of the Crown Court, the justices should have regard to the locations of the Crown Court designated by a presiding judge as the locations to which cases should normally be committed from their area: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at III.21.6-III.21.9, CA; *Practice Direction (Crown Court: Classification and Allocation of Business)* [2005] 1 WLR 2215 at III.21.6-III.21.9.

As to committal for sentence in respect of other offences see PARA 17.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 13(5)(b) (amended by SI 2005/886).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/1. POWERS OF CROWN COURT AND MAGISTRATES' COURTS/(5) DISCHARGE/43. Person subject to order for conditional discharge convicted of offence; powers of court.

43. Person subject to order for conditional discharge convicted of offence; powers of court.

Where it is proved to the satisfaction of the court¹ by which an order for conditional discharge was made that the person in whose case the order was made has been convicted² of an offence committed during the period of conditional discharge³, the court may deal with him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence⁴.

If a person in whose case an order for conditional discharge was made by a magistrates' court is convicted before the Crown Court of an offence committed during the period of conditional discharge⁵, or is dealt with by the Crown Court for any such offence in respect of which he was committed for sentence to the Crown Court⁶, the Crown Court may deal with him, for the offence for which the order was made, in any way in which the magistrates' court could deal with him if it had just convicted him of that offence⁷; and, if he is so convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may, with the consent of the court which made the order, deal with him, for the offence for which the order was made, in any way in which the court could deal with him if it had just convicted him of that offence⁸. Where an order for conditional discharge has been made by a magistrates' court in the case of an offender under 18 years of age⁹ in respect of an offence triable only on indictment in the case of an adult, any powers exercisable by that or any other court¹⁰ in respect of the offender after he has attained the age of 18 are powers to do either or both of:

- 146 (1) impose a fine not exceeding £5,000 for the offence in respect of which the order was made¹¹; and
- 147 (2) deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months¹².

A sentence, even though a nominal sentence, should normally be imposed for the offence for which the order of conditional discharge was made¹³.

1 As to the meaning of 'court' see PARA 1 note 1.

2 Ie by a court in Great Britain: Powers of Criminal Courts (Sentencing) Act 2000 s 13(10).

3 As to the period of conditional discharge see PARA 40. In proceedings before the Crown Court, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge must be determined by the court and not by the verdict of a jury: Powers of Criminal Courts (Sentencing) Act 2000 s 15(3). As to a conviction in respect of which an invalid sentence was imposed see *R v Green* [1959] 2 QB 127, 42 Cr App Rep 77, CCA.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 13(6). See the text to notes 11-12.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 13(7)(a).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 13(7)(b).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 13(7). See the text to notes 11-12.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 13(8). See the text to notes 11-12. The court by which the order for conditional discharge was made must be notified: see CrimPR 54.1.

9 As to the determination of a person's age for these purposes see PARA 27.

10 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 13(6), (7) or (8).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 13(9)(a).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 13(9)(b).

13 Unless a sentence is imposed, the conviction cannot be treated as such for certain purposes: see PARA 41.

UPDATE

43 Person subject to order for conditional discharge convicted of offence; powers of court

NOTE 8--CrimPR 54.1 now Criminal Procedure Rules 2010, SI 2010/60, r 54.1.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/44. Right of appeal.

2. APPEAL AND REVIEW OF SENTENCES

(1) APPEALS

44. Right of appeal.

Appeal, usually with leave¹ of the Court of Appeal, lies against the majority² of sentences³ passed in the Crown Court; and, if leave is given, the sentence may be altered by the Court of Appeal⁴. The Court of Appeal will normally interfere only if the sentence was defective in law, or improperly took material into account, or was manifestly excessive or wrong in principle⁵; however, it may also review sentences which appear to have been unduly lenient if the Attorney General refers such cases to it⁶.

1 An appeal against sentence lies only with leave of the Court of Appeal unless the judge who passed the sentence grants a certificate that the case is fit for appeal: see the Criminal Appeal Act 1968 s 11(1), (1A); PARA 46; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1848. For the powers of a single judge to grant leave see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1854. As to the power of the Criminal Cases Review Commission to refer a sentence to the Court of Appeal for review see PARA 52; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1963 et seq. There is an appeal as of right against a sentence for contempt of court: see the Administration of Justice Act 1960 s 13; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 512.

2 As to the right of appeal against sentence see PARAS 45-48.

3 As to the meaning of 'sentence' for this purpose see the Criminal Appeal Act 1968 s 50(1); and PARA 45.

4 See the Criminal Appeal Act 1968 s 11; and PARAS 46, 49.

5 See PARA 50.

6 See PARA 55 et seq.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/45. Sentences which may be appealed.

45. Sentences which may be appealed.

In the context of an appeal against sentence¹, 'sentence' includes any order made by a court when dealing with an offender² including, in particular:

- 148 (1) a hospital order³ with or without a restriction order⁴;
- 149 (2) an interim hospital order⁵;
- 150 (3) a hospital direction and a limitation direction⁶;
- 151 (4) a recommendation for deportation⁷;
- 152 (5) a confiscation order⁸ and an order varying such an order⁹;
- 153 (6) a declaration of relevance¹⁰ as respects an offence relating to a football match¹¹; and
- 154 (7) an order for the forfeiture or suspension¹² of personal licence to supply alcohol¹³.

In addition, the following orders have been held, or are expressly stated, to be appealable:

- 155 (a) an order that the defendant pay prosecution costs¹⁴;
- 156 (b) restitution and compensation orders¹⁵;
- 157 (c) an order for disqualification for holding or obtaining a driving licence¹⁶;
- 158 (d) an order for driving test made on application for removal of disqualification, being an order in 'subsequent proceedings'¹⁷;
- 159 (e) an order revoking parole licence on conviction of an offence¹⁸;
- 160 (f) binding over to come up for judgment¹⁹;
- 161 (g) an order for deferment of sentence²⁰;
- 162 (h) a period specified²¹ in connection with a life sentence, whether the life sentence is a mandatory life sentence passed on conviction for murder, a discretionary life sentence or a life sentence passed²² for public protection²³;
- 163 (i) an anti-social behaviour order or interim anti-social behaviour order²⁴;
- 164 (j) an individual support order²⁵;
- 165 (k) an order disqualifying a person for working with children²⁶;
- 166 (l) a drinking banning order²⁷;
- 167 (m) a hospital order, an interim hospital order or a supervision order²⁸;
- 168 (n) a restraining order²⁹;
- 169 (o) a serious crime prevention order³⁰;
- 170 (p) a sexual offences prevention order³¹;
- 171 (q) a compensation order³²;
- 172 (r) an order that parents pay a fine, surcharge, costs or compensation³³;
- 173 (s) a restitution order³⁴;
- 174 (t) a confiscation order³⁵;
- 175 (u) a financial reporting order³⁶;
- 176 (v) a control order³⁷;
- 177 (w) a football banning order³⁸;
- 178 (x) a foreign travel order³⁹;
- 179 (y) a notification order⁴⁰;
- 180 (z) a foreign travel restriction order⁴¹;
- 181 (aa) a risk of sexual harm order⁴²; and

182 (bb) a violent offender order⁴³.

The following do not fall within the meaning of 'sentence' for this purpose:

183 (i) an order⁴⁴ for the repayment of the costs of representation by Criminal Defence Service⁴⁵; and

184 (ii) binding over to keep the peace⁴⁶.

Where there are two or more defendants and an order is made upon sentence which the court has power to make in respect of one of the defendants only, the other defendant has no right of appeal against that order even if he is in fact affected by it⁴⁷.

1 le for the purposes of the Criminal Appeal Act 1968: see PARAS 44, 46 et seq.

2 Criminal Appeal Act 1968 s 50(1) (s 50(1) substituted by the Criminal Justice Act 1993 Sch 5 Pt 1).

3 le under the Mental Health Act 1983 Pt III (ss 35-55): see PARA 332 et seq; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491.

4 Criminal Appeal Act 1968 s 50(1)(a) (as substituted: see note 2). As to restriction orders see PARA 337.

5 Criminal Appeal Act 1968 s 50(1)(b) (as substituted: see note 2). As to interim hospital orders see the Mental Health Act 1983 Pt III; PARA 334; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491.

6 Criminal Appeal Act 1968 s 50(1)(bb) (as substituted (see note 2); added by the Crime (Sentences) Act 1997 Sch 4 para 6(1)(a)). See the Mental Health Act 1983 Pt III; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 490.

7 Criminal Appeal Act 1968 s 50(1)(c) (as substituted: see note 2). See PARA 9; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 160 et seq.

8 le an order under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) (see PARA 390 et seq), an order under the Drug Trafficking Act 1994 other than one made by the High Court (provisions repealed: see PARA 474) or an order under the Criminal Justice Act 1988 Pt VI (ss 71-103) (repealed: see PARA 460 et seq).

9 Criminal Appeal Act 1968 s 50(1)(ca), (cb), (d)-(g) (as substituted (see note 2); s 50(1)(ca), (cb) added by the Proceeds of Crime Act 2002 Sch 11 paras 1, 4(1), (3); Criminal Appeal Act 1968 s 50(1)(d), (g) amended by the Drug Trafficking Act 1994 Schs 1, 2). An order made by the Crown Court varying a confiscation order made by the High Court by virtue of the Drug Trafficking Act 1994 s 19 (repealed) is appealable under these provisions, and an order varying a confiscation order under the Proceeds of Crime Act 2002 is appealable only if the varying order is made under s 21 (see PARA 407), s 22 (see PARA 408) or s 29 (see PARA 415): Criminal Appeal Act 1968 s 50(1)(cb), (g) (as so substituted and amended).

10 le within the meaning of the Football Spectators Act 1989 s 23: see **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 112.

11 Criminal Appeal Act 1968 s 50(1)(h) (as substituted (see note 2); amended by the Violent Crime Reduction Act 2006 Sch 3 para 14(1), (2)).

12 le under the Licensing Act 2003 s 129(2): see **LICENSING AND GAMBLING** vol 67 (2008) PARA 129.

13 Criminal Appeal Act 1968 s 50(1)(i) (as substituted (see note 2); amended by the Licensing Act 2003 Sch 6 paras 38, 42).

14 *R v Hayden* [1975] 2 All ER 558, 60 Cr App Rep 304, CA.

15 *R v Parker* [1970] 2 All ER 458, [1970] 1 WLR 1003, CA; *R v Brogan* [1975] 1 All ER 879, 60 Cr App Rep 279, CA. As to restitution orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 148; and PARAS 388-389. As to compensation orders see s 130; and PARAS 375-382. There is no right of appeal by a person other than the convicted person: *R v Elliot* [1908] 2 KB 452, 1 Cr App Rep 15, CCA. As to the suspension of the operation of orders for restitution, and of compensation orders, pending appeal see PARAS 389, 382; and as to the power of the Court of Appeal to annul or vary any such order without quashing the conviction see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1884.

- 16 *R v McNulty* [1965] 1 QB 437, [1964] 3 All ER 713, CA (decided under the Criminal Appeal Act 1907 s 21 (repealed)).
- 17 *R v Bentham* [1982] RTR 357, (1981) 3 Cr App Rep (S) 229.
- 18 *R v Welch* [1982] 2 All ER 824, 75 Cr App Rep 207, CA.
- 19 *R v Williams* [1982] 3 All ER 1092, 75 Cr App Rep 378, CA.
- 20 *A-G's Reference (No 22 of 1992)* [1994] 1 All ER 105, 97 Cr App Rep 275, CA; *R v L (Deferred Sentence)* [1999] 1 WLR 479, sub nom *A-G's References (Nos 36 and 38 of 1998)*, *R v Jones (William)* [1999] 2 Cr App Rep (S) 7, CA.
- 21 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A: see PARA 33.
- 22 Ie under the Criminal Justice Act 2003 s 225: see PARAS 73, 74.
- 23 *R v Dalton* [1995] QB 243, [1995] 2 Cr App Rep 340, CA.
- 24 See the Crime and Disorder Act 1998 s 4(1); and PARAS 304, 306, 496, 498.
- 25 See the Crime and Disorder Act 1998 s 4(1); and PARA 310.
- 26 See the Criminal Justice and Court Services Act 2000 s 28; and PARA 316.
- 27 See the Violent Crime Reduction Act 2006 s 10(1); and PARAS 320, 526.
- 28 See the Criminal Appeal Act 1968 s 16A(1); and PARAS 332, 375, 368.
- 29 See the Protection from Harassment Act 1997 s 5A; and PARA 349.
- 30 See the Serious Crime Act 2007 ss 23(1), 24(1); and PARAS 357, 599.
- 31 See the Sexual Offences Act 2003 s 110(1); and PARAS 363, 602.
- 32 See the Powers of Criminal Courts (Sentencing) Act 2000 s 132; and PARA 382.
- 33 See the Powers of Criminal Courts (Sentencing) Act 2000 s 137(6); and PARA 383.
- 34 See the Powers of Criminal Courts (Sentencing) Act 2000 s 149(3); and PARA 388.
- 35 See the Proceeds of Crime Act 2002 s 31(1); and PARA 417.
- 36 See *R v Adams* [2008] EWCA Crim 914, [2008] 4 All ER 574; and PARA 475.
- 37 See the Prevention of Terrorism Act 2005 s 10(1); and PARA 509.
- 38 See the Football Spectators Act 1989 s 14D(1); and PARA 530.
- 39 See the Sexual Offences Act 2003 s 119(1); and PARA 536.
- 40 See the Sexual Offences Act 2003 s 101; and PARA 573.
- 41 See the Counter-Terrorism Act 2008 Sch 5 para 12; and PARA 588.
- 42 See the Sexual Offences Act 2003 s 127; and PARA 594.
- 43 See the Criminal Justice and Immigration Act 2008 s 106(1); and PARA 607.
- 44 Ie under the Access to Justice Act 1999 s 17: see **LEGAL AID** vol 65 (2008) PARA 174.
- 45 Criminal Appeal Act 1968 s 50(3) (added by the Access to Justice Act 1999 Sch 4 para 3).
- 46 *R v Randall* (1986) 8 Cr App Rep (S) 433, [1987] Crim LR 254, CA.
- 47 *R v Ioannou* [1975] 3 All ER 400, 61 Cr App Rep 257, CA (owner of restaurant could not appeal against disqualification of licence-holder of premises).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/46. Appeal against sentence following conviction on indictment.

46. Appeal against sentence following conviction on indictment.

A person who has been convicted of an offence on indictment¹ may appeal to the Court of Appeal against any sentence (not being a sentence fixed by law)² passed on him for the offence, whether passed on his conviction or in subsequent proceedings³.

An appeal against sentence⁴ lies only with the leave of the Court of Appeal⁵; but, if within 28 days from the date on which the sentence was passed the judge who passed the sentence grants a certificate that the case is fit for appeal⁶, an appeal lies without the leave of the Court of Appeal⁷. The court may treat an application for leave to appeal as the hearing of the appeal⁸.

The giving of notice of appeal does not in general suspend the operation of any sentence or order of the court of trial but, subject to any direction which the Court of Appeal may give to the contrary, the time during which an appellant is in custody pending the determination of his appeal is reckoned as part of the term of any sentence to which he is for the time being subject⁹.

Procedural provision is also made in connection with appeals against sentence¹⁰.

1 All proceedings on indictment in England and Wales are brought in the Crown Court: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1232. As to appeals against sentence where the conviction was not on indictment see PARA 47.

2 As to the meaning of 'sentence' for these purposes see PARA 45; and as to sentences fixed by law see PARA 15. The reference to a sentence fixed by law does not include a reference to an order made under the Criminal Justice Act 2003 s 269(2) or (4) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90) in relation to a life sentence (as defined by s 277 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90)) that is fixed by law: Criminal Appeal Act 1968 s 9(1A) (added by the Criminal Justice Act 2003 s 271(1)). If a statutory provision which requires the imposition of a sentence of life imprisonment is incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 122 et seq) then, at least until Parliament has had the opportunity to consider its response to the court's declaration of incompatibility, the sentence is not fixed by law for the purposes of the Criminal Appeal Act 1968 s 9(1); alternatively the exclusion of sentences fixed by law is itself subject to an implied exception where the statutory provision fixing the sentence was incompatible with the Convention: *R (on the application of Lichniak) v Secretary of State for the Home Department*; *R (on the application of Pyrah) v Secretary of State for the Home Department* [2001] EWHC 294 (Admin), [2002] QB 296, [2001] 4 All ER 934, DC and CA (point not considered in *R v Lichniak*, *R v Pyrah* [2002] UKHL 47, [2003] 1 AC 903, [2002] 4 All ER 1122).

3 Criminal Appeal Act 1968 s 9(1) (numbered as such by the Criminal Justice Act 1988 Sch 15 paras 20, 21). As to appeals where the convicted person has died see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1977. Where the Crown Court, in dealing with an offender either on his conviction on indictment or in a proceeding to which the Criminal Appeal Act 1968 s 10(2) (see PARA 47) applies, has passed on him two or more sentences in the same proceeding, being sentences against which an appeal lies under s 9(1) or s 10 (see PARA 47), an appeal or application for leave to appeal against any one of those sentences is to be treated as an appeal or application in respect of both or all of them: s 11(2) (amended by the Courts Act 1971 Sch 8 para 57(1); and the Criminal Justice Act 1988 Sch 15 paras 20, 23(1)). For the purposes of the Criminal Appeal Act 1968 s 11, any two or more sentences are to be treated as passed in the same proceeding if they are passed on the same day, or they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence: s 11(7) (added by the Criminal Justice Act 2003 s 319(1), (3)).

Where different orders, each of which is a sentence for present purposes, are made in separate proceedings, two appeals may be made against sentence: *R v Neal (John Frederick)* [1999] 2 Cr App Rep (S) 352, [1999] Crim LR 509, CA (defendant convicted of drug trafficking offence and sentenced to imprisonment; confiscation order later made in postponed proceedings; earlier appeal against sentence of imprisonment not a bar to appeal against confiscation order).

The court has jurisdiction to entertain an appeal against sentence under the Criminal Appeal Act 1968 s 9 even if it has already reviewed the sentence upon a reference by the Attorney General under the Criminal Justice Act 1988 s 36, although its earlier decision would generally constitute as much an end to the sentencing process as would its decision upon an application by the defendant under the Criminal Appeal Act 1968 s 9: see *R v Hughes* [2009] EWCA Crim 841, [2009] All ER (D) 141 (May).

It is the duty of the Director of Public Prosecutions to appear for the prosecution, when directed by the court to do so on any appeal to the criminal division of the Court of Appeal: see the Prosecution of Offences Act 1985 s 3(2)(f)(ii); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1850.

4 le under the Criminal Appeal Act 1968 s 9 or s 10: s 11(1) (amended by the Criminal Justice Act 1982 s 29(2)).

5 Criminal Appeal Act 1968 s 11(1) (as amended: see note 4). Applications are normally considered in the first instance by a single judge: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1854. Certain of the Court of Appeal's powers in respect of appeals to it may be exercised by a single judge or by the Registrar of Criminal Appeals: see ss 31, 31A-31C; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1851-1853.

6 Where such a certificate has been granted, the Court of Appeal may not give a direction under the Criminal Appeal Act 1968 s 29(1) that time spent in custody is not to be reckoned as part of sentence: see s 29(2)(b) (amended by the Criminal Justice Act 1988 Sch 15 paras 20, 27); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1845.

7 Criminal Justice Act 1968 s 11(1A) (added by the Criminal Justice Act 1982 s 29(2)(a); amended by the Criminal Justice and Immigration Act 2008 Sch 8 paras 1, 3).

8 See *R v Jowsey* (19150 84 LJKB 2118, 11 Cr App Rep 241, CCA; *R v Thomas* (1941) 28 Cr App Rep 21, CCA. Consent of counsel is required to such course or, if the appellant is not represented, he must be given the opportunity to request the case to be restored to the list: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1874. As to information which may be required by the court see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1866.

9 See the Criminal Appeal Act 1968 s 29; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1844, 1845.

10 See the Criminal Appeal Act 1968 ss 18-23A; CrimPR Pt 68; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1856-1876. See also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1978-1979 (the royal prerogative of mercy); and the Criminal Appeal Act 1968 s 44A (appeals in cases of death: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1977).

UPDATE

46 Appeal against sentence following conviction on indictment

NOTE 10--CrimPR Pt 68 now Criminal Procedure Rules 2010, SI 2010/60, Pts 65, 68.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/47. Appeal against sentence of the Crown Court after summary conviction.

47. Appeal against sentence of the Crown Court after summary conviction.

The proceedings from which an appeal against sentence after summary conviction¹ lies are those where an offender convicted of an offence by a magistrates' court:

- 185 (1) is committed by the court to be dealt with for his offence before the Crown Court²; or
- 186 (2) appears or is brought before the Crown Court to be further dealt with for an offence in respect of which he had been made the subject of a conditional discharge or a community order or had been given a suspended sentence³.

An offender dealt with for an offence before the Crown Court in such a proceeding⁴ may appeal to the Court of Appeal against any sentence passed on him for the offence by the Crown Court⁵.

¹ ie an appeal against sentence when a person is dealt with by the Crown Court (otherwise than on appeal from a magistrates' court) for an offence of which he was not convicted on indictment: Criminal Appeal Act 1968 s 10(1) (amended by the Courts Act 1971 Sch 8 para 57(1)). There is no right of appeal to the Court of Appeal from proceedings in the Crown Court on appeal from a magistrates' court since those proceedings do not fall within the Criminal Appeal Act 1968. As to appeals to the Crown Court from a magistrates' court against summary conviction and sentence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1980 et seq; and as to when the Crown Court may be asked to state a case on a point of law for the opinion of the High Court see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2005 et seq.

² Criminal Appeal Act 1968 s 10(2)(a) (amended by the Courts Act 1971 Sch 8 para 57(1)). As to the committal of a person convicted by a magistrates' court to the Crown Court for sentence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1123-1130; as to committal in connection with an offence committed during the period of certain community orders or an order for conditional discharge see PARAS 42, 233; and in connection with hospital orders see PARA 332 et seq; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 498. Invalidity of the committal to the Crown Court does not constitute a ground of appeal; application for judicial review should be made to quash the committal: *R v Jones* [1969] 2 QB 33, 53 Cr App Rep 87, CA; *R v Warren* [1954] 1 All ER 597, 38 Cr App Rep 44, CCA; *R v Brown* [1963] Crim LR 647, CCA. See also *R v Finch* (1962) 47 Cr App Rep 58, CCA; *R v Birtles* [1975] 3 All ER 395, [1975] 1 WLR 1623, CA. The charges committed to the Crown Court should be clear from the record so that they are apparent on a subsequent appeal to the Court of Appeal: *R v Hooper* [1967] 1 All ER 766n, [1967] 1 WLR 657, CA.

³ An offender may appeal against his sentence under these provisions if he has been given a suspended sentence (see PARA 110) or has been made the subject of an order for conditional discharge (see PARA 40) or a youth rehabilitation order within the meaning of the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8) (see PARA 202) or a community order within the meaning of the Criminal Justice Act 2003 Pt 12 (ss 142-305) (see PARA 163): Criminal Appeal Act 1968 s 10(2)(b) (substituted by the Criminal Justice and Immigration Act 2008 Sch 4 para 4).

As to dealing with an offence committed by a person subject to an order for conditional discharge see PARA 43.

⁴ ie a proceeding to which the Criminal Appeal Act 1968 s 10(2) applies: see the text and notes 1-3.

⁵ Criminal Appeal Act 1968 s 10(3) (substituted by the Criminal Justice Act 2003 s 319(1), (2)).

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48. Appeal against sentence imposed by Crown Court for summary offence by person committed for trial on indictment of offence triable either way.

A person who on conviction on indictment has also been convicted of a summary offence¹ may appeal to the Court of Appeal against any sentence passed on him² for the summary offence, whether on his conviction or in subsequent proceedings³. Where following conviction on indictment a person has been convicted of a summary offence⁴, an appeal or application for leave to appeal against any sentence for the offence triable either way⁵ for which he was committed for trial is to be treated also as an appeal or application in respect of any sentence for the summary offence; and an appeal or application for leave to appeal against any sentence for the summary offence is to be treated also as an appeal or application in respect of the offence triable either way⁶.

1 Ie under the Crime and Disorder Act 1998 Sch 3 para 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1885); Criminal Appeal Act 1968 s 9(2) (added by the Criminal Justice Act 1988 Sch 15 para 21; amended by the Crime and Disorder Act 1998 Sch 8 para 12; the Access to Justice Act 1999 s 58(3); and by the Criminal Justice Act 2003 Sch 3 para 44(1), (3), Sch 37 Pt 4) (subject to a saving for charges brought before 15 January 2001: see the Crime and Disorder Act 1998 (Commencement No 8) Order 2000, SI 2000/3283, arts 2(c), 3). These provisions formerly applied to convictions under the Criminal Justice Act 1988 s 41: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1358; and the saving noted above.

2 Ie under the Crime and Disorder Act 1998 Sch 3 para 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1140) or, as the case may be, the Criminal Justice Act 1988 s 41(7) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1358); Criminal Appeal Act 1968 s 9(2) (as added and amended: see note 1).

3 Criminal Appeal Act 1968 s 9(2) (as added and amended: see note 1).

4 Ie under the Criminal Justice Act 1988 s 41 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1358).

5 If the appellant or applicant was convicted on indictment of two or more offences triable either way, references to the offence triable either way are to be construed, in relation to the summary offence of which he was convicted under the Criminal Justice Act 1988 s 41 following conviction on indictment, as references to the offence triable either way specified in the notice relating to that summary offence which was given under s 41(2) (prospectively repealed) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 660); Criminal Appeal Act 1968 s 11(2B) (s 11(2A), (2B) added by the Criminal Justice Act 1988 Sch 15 paras 20, 23(2)).

6 Criminal Appeal Act 1968 s 11(2A) (as added: see note 5).

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49. Alteration of sentence.

On an appeal against sentence¹, if the Court of Appeal considers that the appellant should be sentenced differently for an offence for which he was dealt with by the court below, it may:

- 187 (1) quash any sentence or order which is the subject of the appeal²; and
- 188 (2) in place of it pass such sentence or make such order as it thinks appropriate for the case and as the court below had power to pass or make when dealing with him for the offence³;

but the court must so exercise its powers that, taking the case as a whole, the appellant is not more severely⁴ dealt with on appeal than he was dealt with by the court below⁵.

1 Ie under the Criminal Appeal Act 1968 s 9 or s 10: see PARAS 46-48. As to the meaning of 'sentence' see PARA 45. The court cannot interfere with a sentence fixed by law: see PARA 46. There is no appeal against the variation by the Home Secretary of the type of custodial treatment: *R v Keating* (1910) 103 LT 322, 5 Cr App Rep 181, CCA; see also *R v Lord* (1908) 72 JP 400, 1 Cr App Rep 110, CCA.

2 Criminal Appeal Act 1968 s 11(3)(a). The effect of quashing a sentence is to make the sentence void only for the future, not from its commencement: *Hancock v Prison Comrs* [1960] 1 QB 117, [1959] 3 All ER 513. As to bail where an interim hospital order is quashed see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1196.

As from a day to be appointed where the Court of Appeal exercises its power under the Criminal Appeal Act 1968 s 11(3)(a) to quash a confiscation order (ie an order made under the Proceeds of Crime Act 2002 s 6 (see PARA 391 et seq), the Drug Trafficking Offences Act 1986 s 1 (repealed), the Criminal Justice Act 1988 s 71 (repealed) or the Drug Trafficking Act 1994 s 2 (repealed) (see PARA 474)), it may, instead of proceeding under the Criminal Appeal Act 1968 s 11(3)(b) (see the text and note 3), direct the Crown Court to proceed afresh under the relevant enactment (ie the enactment under which the order was made): ss 11(3A), (3D), 11A(4) (ss 11(3A)-(3D), 11A prospectively added by the Coroners and Justice Act 2009 s 140). When proceeding afresh pursuant to the Criminal Appeal Act 1968 s 11(3A) the Crown Court must comply with any directions the Court of Appeal may make: s 11(3B) (as so prospectively added). The Court of Appeal must exercise the power to give such directions so as to ensure that any confiscation order made in respect of the appellant by the Crown Court does not deal more severely with the appellant than the order quashed under s 11(3)(a): s 11(3C) (as so prospectively added).

As from a day to be appointed where the Court of Appeal quashes a confiscation order under s 11(3)(a) (the 'quashed order') and, under s 11(3A), directs the Crown Court to proceed afresh under the relevant enactment, these provisions do not prevent any sum paid by the appellant pursuant to the quashed order being a sum which is recoverable from the Secretary of State as a debt owing to the appellant, but the Court of Appeal may direct that any such sum is not to be repaid until such time as the Crown Court makes a confiscation order, or decides not to make such an order, when proceeding afresh pursuant to s 11(3A): s 11A(1), (2) (as so prospectively added). These provisions also do not prevent an amount which would otherwise fall to be repaid as a result of the order being quashed being set against an amount which the appellant is required to pay by virtue of a confiscation order made by the Crown Court in those proceedings: s 11A(3) (as so prospectively added).

At the date at which this volume states the law no day had been appointed for the coming into force of these amendments.

3 Criminal Appeal Act 1968 s 11(3)(b). Any power of the criminal division of the Court of Appeal to pass a sentence includes a power to make a recommendation for deportation in cases where the court from which the appeal lies had power to make such a recommendation: s 50(2). As to the reduction of a sentence where the appellant gives evidence against his co-accused see *R v A* [2006] EWCA Crim 1803, [2007] 1 Cr App Rep (S) 347, [2006] All ER (D) 348 (Jun). Where the Court of Appeal substitutes a suspended sentence of imprisonment for a sentence of imprisonment having immediate effect, it should have in mind any period which the appellant has spent in custody: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at I.9.1, CA.

In relation to an offence committed before 4 April 2005 the power of the Court of Appeal under the Criminal Appeal Act 1968 s 11(3) to pass a sentence which the court below had power to pass for an offence must, notwithstanding that the court below made no order under the Powers of Criminal Courts (Sentencing) Act 2000 s 119(1) (repealed) in respect of a suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that sentence where the court below made no order in respect of it: Criminal Appeal Act 1968 s 11(4) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 29; repealed by the Criminal Justice Act 2003 Sch 32 paras 7, 9, Sch 37 Pt 7, subject to a saving in relation to offences committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(b), (c)(iii)), (3))).

As to the commencement of a sentence passed by the Court of Appeal see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1845; as to passing sentence in the appellant's absence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1874; and as to the principles on which a court acts in altering a sentence see PARA 50.

4 No guidance is given in the Criminal Appeal Act 1968 as to what constitutes greater severity in sentences which are not of a like nature. A hospital order is not more severe than a sentence of imprisonment because of the curative element (*R v Bennett* [1968] 2 All ER 753, 52 Cr App Rep 514, CA), and when a hospital order is so made, an order under the Mental Health Act 1983 s 41 (restricting discharge: see PARA 337) should also be made in appropriate cases (see *R v Gardiner* [1967] 1 All ER 895, 51 Cr App Rep 187, CA). An immediate sentence of imprisonment has been held to be more severe than a suspended sentence of the same period (see *R v Taylor* (1968) 53 Cr App Rep 175, CA; *R v March* [1970] 2 All ER 536n, [1970] 1 WLR 998, CA) and a sentence of life imprisonment is more severe than a fixed term of any length (*R v Gills* [1967] Crim LR 247, CA; *R v Whittaker* [1967] Crim LR 431, CA; *R v Sieh* [1969] Crim LR 99, CA; *R v Stofile* [1969] Crim LR 325, CA). In *R v Kruger* [1973] Crim LR 133, CA, a reduction in a sentence of imprisonment was balanced by a recommendation for deportation. See also *R v Reynolds* [2007] EWCA Crim 538, [2007] 4 All ER 369, [2007] 2 Cr App Rep (S) 553, [2007] 2 Cr App Rep (S) 553 (alteration of sentence imposed under the provisions relating to dangerous offenders in the Criminal Justice Act 2003 Pt 12 Ch 5 (ss 224-236) (see PARA 68 et seq); *R v Murphy* [1989] RTR 236, 89 Cr App Rep 176, CA (six years' disqualification for driving and an order requiring the appellant to pass a driving test not more severe than eight years' disqualification without such order). Where the Crown Court has failed to order disqualification for driving until the appropriate driving test has been passed, in circumstances where it is required so to order by the Road Traffic Offenders Act 1988 s 36 (as substituted and amended: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1071), the Court of Appeal does not have power on an unsuccessful appeal to make such an order, because to do so would result in the appellant being dealt with more severely on appeal than by the court below: *R v Murphy* [1989] RTR 236, 89 Cr App Rep 176, CA; *R v Lauder* (1999) 163 JP 721, CA.

5 Criminal Appeal Act 1968 s 11(3). The power to increase sentence was abolished by the Criminal Appeal Act 1966 s 4(2) (repealed). As to the Court of Appeal's review of other sentences passed in the same proceedings see PARA 46. In the case of committals to the Crown Court for sentence, the court's powers on appeal are limited to what the Crown Court could have ordered: see the Criminal Appeal Act 1968 s 11(3)(b); and the text and note 3.

The court must look at the case as a whole as well as considering each separate sentence: *R v Marsden* (28 February 1972, unreported), CA. The court may increase one sentence in an appropriate case where convictions have been quashed on other counts: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1884. The periods of imprisonment imposed by the Crown Court on separate indictments may be adjusted so as to give the Court of Appeal power to make a suspended sentence supervision order: see *R v Baker* (1988) 10 Cr App Rep (S) 409, CA. As to adjustments in sentence by reason of disparity in sentences of co-defendants etc see PARA 50.

Up to the time when that officer has amended the records of the court of trial, the Court of Appeal may alter a sentence which it has passed: *R v Cross* [1973] QB 937, 57 Cr App Rep 660, CA.

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50. Principles on which Court of Appeal interferes with a sentence.

The Court of Appeal will not generally reduce a sentence¹ merely because it would have passed a somewhat different sentence², but it will interfere where³:

- 189 (1) the sentence is defective in law⁴;
- 190 (2) the sentence improperly took material into account⁵;
- 191 (3) the sentence was passed on an incorrect factual basis⁶;
- 192 (4) the sentence is manifestly excessive or wrong in principle⁷;
- 193 (5) in exceptional circumstances, the interests of the appearance of justice so require⁸, even though the original sentence may not be manifestly excessive or wrong in principle⁹.

1 As to the meaning of 'sentence' see PARA 45.

2 See eg *R v Sidlow* (1908) 72 JP 391, 1 Cr App Rep 28, CCA; *R v Maurice* (1908) 1 Cr App Rep 176, CCA; *R v Nuttall* (1908) 73 JP 30, 1 Cr App Rep 180, CCA; *R v Shershewsky* (1912) 28 TLR 364, CCA; *R v Wolff* (1914) 10 Cr App Rep 107, CCA; *R v Gumbs* (1927) 19 Cr App Rep 74, CCA; *R v Mabrouk* (1 February 1965, unreported), CCA. As to the principles which should be considered by the trial judge in determining sentence see PARA 615 et seq. As to 'guideline' cases see PARA 15.

3 Heads (1)-(5) in the text should not be regarded as providing an exhaustive list.

4 Eg because the sentence exceeds the prescribed maximum, because a procedural requirement has not been satisfied or because a specified statutory pre-condition is not satisfied: see *R v Jackson* [1974] QB 517, [1974] 2 All ER 211, CA; *R v Marquis* [1974] 2 All ER 1216, 59 Cr App Rep 228, CA. Under this heading, the Court of Appeal can interfere with an invalid sentence even though there is a statutory prohibition on an appeal against the type of sentence in question: *R v Wehner* [1977] 3 All ER 553, 65 Cr App Rep 1, CA; *R v Cain* [1985] AC 46, [1984] 2 All ER 737, HL.

5 Eg *R v Wilson* [1980] 1 All ER 1093, 70 Cr App Rep 219, CA. The Court of Appeal has power to hear additional evidence, such as up-to-date medical or prison reports or changed family circumstances or employment prospects (see the Criminal Appeal Act 1968 s 23; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1866) but the case law is insufficiently developed to provide a clear indication of when the Court of Appeal will interfere with a sentence on the basis solely of such additional material: cf *R v Thomas* [1983] Crim LR 493, CA, and *R v Waddingham* (1983) 5 Cr App Rep (S) 66, [1983] Crim LR 492, CA.

6 See eg *R v Reeves* (1983) 5 Cr App Rep (S) 188, CA. Where there is more than one view of the facts, the judge is entitled to form his own view of them provided that it is consistent with the verdict and supported by the evidence given; he does not have to sentence the defendant on the most favourable view of the facts: *R v Solomon*, *R v Triumph* (1984) 6 Cr App Rep (S) 120, [1984] Crim LR 433, CA. Within this consideration are also included cases where a wrong aggregation of sentences has been made: *R v Hussain* [1962] Crim LR 712, CCA.

7 *R v Ross* (1909) 3 Cr App Rep 198, CCA; *R v Shershewsky* (1912) 28 TLR 364, CCA; *R v Gumbs* (1926) 19 Cr App Rep 74, CCA; *R v Lambert* (1926) 19 Cr App Rep 131, CCA; *R v Dunbar* (1928) 21 Cr App Rep 19, CCA; *R v Waddingham* (1983) 5 Cr App Rep (S) 66, [1983] Crim LR 492, CA. It is not enough that the sentence is more severe than the Court of Appeal would have imposed; it must be much too severe or the wrong form of sentence: see eg *R v Gumbs* (1926) 19 Cr App Rep 74, CCA; *R v Socratous* (1984) 6 Cr App Rep (S) 33, [1984] Crim LR 301, CA; *R v Rahiem* [2007] EWCA Crim 653, [2007] All ER (D) 224 (Feb) (court would not interfere where defence counsel advised that sentence was 'on the high side'). See also *R v O'Connell* (1909) 73 JP 118, 2 Cr App Rep 11, CCA (wrong standard applied); *R v Reeves* (1972) 56 Cr App Rep 366, [1972] Crim LR 194, CA (wrong in principle to pass sentence of imprisonment because of inability to pay a fine); *R v King*, *R v Simpkins* (1973) 57 Cr App Rep 696, CA (wrong in principle to give consideration to defendant's political utterances); *R v Longman* [1974] Crim LR 374, CA (sentence within statutory maximum but in excess of maximum prescribed by subsequent legislation in force at time of trial: sentence wrong in principle); *R v Mark* (1974) Times, 16 October, CA (sentence wrong in principle, grossly excessive and harsh); *R v Stewart* [2007] EWCA Crim 1621, [2007] All

ER (D) 10 (Sep) (imprisonment for public protection); *R v Gbedje* [2007] 2 Cr App Rep (S) 585, [2007] All ER (D) 165 (Mar), CA; *R v Khan* [2009] EWCA Crim 389, [2010] 1 Cr App Rep (S) 1, [2009] All ER (D) 117 (Mar) (manifestly excessive).

The Court of Appeal will not interfere with a sentence on the basis simply of a change in the legislation or the tariff since the time of the sentence: *R v Graham (Edward)* [1999] 2 Cr App Rep (S) 312, [1999] Crim LR 677, CA.

8 *R v Arrowsmith* [1975] QB 678, 60 Cr App Rep 211, CA (defendant might have been misled into believing that she would not be prosecuted if she did what she did). See also *R v Ball* (1951) 35 Cr App Rep 164, CCA; *R v Richards* (1955) 39 Cr App Rep 191, CCA; *R v Coe* [1969] 1 All ER 65, 53 Cr App Rep 66, CA; *R v Parker* [1970] 2 All ER 458, [1970] 1 WLR 1003, CA (cases where disparity in sentence passed on co-defendant gave appearance of injustice). In this type of case, the approach of the court must be to interfere with a sentence where it appears to the court that right-thinking members of the public, with full knowledge of all the relevant facts and circumstances, learning of the sentence would consider that something had gone wrong with the administration of justice: see *R v Fawcett* (1983) 5 Cr App Rep (S) 158, CA per Lawton LJ (citing *R v Pitson* (1972) 56 Cr App Rep 391, CA); and see also *R v Jeavons* [1964] Crim LR 836, CCA; *R v Hickson* (1921) 16 Cr App Rep 47, CCA (sentence reduced because of mitigation allowed to co-appellants). The correct consideration is not whether an appellant feels aggrieved that another defendant has been treated more lightly, but whether the public, viewing the various sentences, would perceive that the appellant has suffered an injustice: *R v Lowe* (1989) Times, 14 November, CA. There is no injustice where the disparity in sentencing merely reflects a disparity in different defendants' apparent motivation to break their cycle of offending: *R v Bowles* [1996] 2 Cr App Rep (S) 248, CA.

9 Eg where the public interest would normally require a substantial penalty: *R v Withers* (1935) 25 Cr App Rep 53, CCA (offence prevalent in locality: on this see further *R v Lanham* [2008] EWCA Crim 2450, [2009] 1 Cr App Rep (S) 592, [2009] Crim LR 125; Sentencing Guidelines Council Guideline *Overarching Principles: Seriousness* (2004) paras 1.38-1.39; and PARA 618); *R v Hollis* [1965] Crim LR 378, CCA (offence of small financial value by railway employee but conviction resulting in loss of job and house); *R v Saunders* [1972] Crim LR 194, CA (conviction for shoplifting; five previous convictions); *R v Anderson* (1972) 56 Cr App Rep 863, CA (persistent shoplifting).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/51. Appeals to the Crown Court.

51. Appeals to the Crown Court.

A person convicted by a magistrates' court may appeal to the Crown Court against his sentence whether or not he pleaded guilty¹, and a person ordered by a magistrates' court to enter into a recognisance or to be of good behaviour may appeal to the Crown Court against such order². Provision is also made for the review of decisions made by the Crown Court in its appellate capacity³.

1 See the Magistrates' Courts Act 1980 s 108; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1980. For the relevant procedure see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1981-1985, 1987-2004.

2 See the Magistrates' Courts (Appeals from Binding Over Orders) Act 1956; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1980.

3 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 2005-2019.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/52. Reference of sentence to Court of Appeal by Criminal Cases Review Commission.

52. Reference of sentence to Court of Appeal by Criminal Cases Review Commission.

Where a person has been convicted of an offence the Criminal Cases Review Commission¹ may (whether or not they refer the conviction) at any time refer to the Court of Appeal (in the case of a conviction on indictment) or the Crown Court (in the case of a summary conviction) any sentence (not being a sentence fixed by law)² imposed on, or in subsequent proceedings relating to, the conviction, and any such reference is treated for all purposes as an appeal by the person³ against the sentence and any other sentence (not being a sentence fixed by law) imposed on, or in subsequent proceedings relating to, the conviction or any associated conviction⁴.

1 As to the Criminal Cases Review Commission see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 2028-2032.

2 As to the meaning of 'sentence' for the purposes of the bringing of appeals against sentence see PARA 45; and as to sentences fixed by law see PARA 15.

3 Ie under the Criminal Appeal Act 1968 s 9: see PARAS 46, 48.

4 See the Criminal Appeal Act 1995 ss 9, 11; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1963-1965, 1982.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/53. Appeals and references from Court of Appeal to Supreme Court.

53. Appeals and references from Court of Appeal to Supreme Court.

An appeal lies to the Supreme Court¹ from any decision of the Court of Appeal on an appeal² against sentence if a point of law of general public importance is involved in the decision and it appears to the Court of Appeal that it ought to be considered by the Supreme Court³. The Court of Appeal may also refer to the Supreme Court a point of law referred to it by the Attorney General⁴.

1 The appellate functions of the Lords of Appeal in Ordinary (ie the House of Lords) were transferred to the Supreme Court established by the Constitutional Reform Act 2005 Pt 3 (ss 23-60) as from 1 October 2009: see ss 23, 24; the Constitutional Reform Act 2005 (Commencement No 11) Order 2009, SI 2009/1604; and **COURTS**.

2 lie under the Criminal Appeal Act 1968: see PARA 44 et seq.

3 See the Criminal Appeal Act 1968 s 33(1)-(3); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1966-1975. The Court of Appeal or the Supreme Court must give leave for such an appeal to be brought: see s 33(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966. There is no appeal to the Supreme Court from a decision of the Court of Appeal to refuse leave: see s 33(3); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966.

4 See the Criminal Justice Act 1972 s 36; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1950-1951, 1976.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(1) APPEALS/54. Prosecution rights of appeal.

54. Prosecution rights of appeal.

The prosecution has a right of appeal to the Court of Appeal and the Supreme Court in respect of the making or otherwise of a confiscation order under the Proceeds of Crime Act 2002¹. The prosecution may also appeal against a decision of the Crown Court to reduce the sentence of a person who has given assistance in a criminal investigation² and against a decision of the court to make a football banning order³.

1 See the Proceeds of Crime Act 2002 ss 31-33; and PARAS 417-419. As to the Supreme Court see PARA 53 note 1.

2 See the Serious Organised Crime and Police Act 2005 s 74(8); and PARA 625.

3 See the Football Spectators Act 1989 s 14A(5A); and PARA 328.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/55. Reference of sentence for review.

(2) REVIEW OF UNDULY LENIENT SENTENCES

55. Reference of sentence for review.

If it appears to the Attorney General that the sentencing¹ of a person in a proceeding² in the Crown Court has been unduly lenient³ and that the case in question is one that is susceptible to review⁴ he may, with the leave of the Court of Appeal, refer the case to the court for it to review the sentencing of that person⁵. The Court of Appeal will not review any sentence referred to it under these provisions on an erroneous basis⁶. No judge may sit as a member of the Court of Appeal on the hearing of, or may determine any application in proceedings incidental or preliminary to, a reference of a sentence passed by himself⁷.

1 As to the sentences which may be reviewed under these provisions see the Criminal Justice Act 1988 s 35(6); and PARA 58. An order deferring the passing of sentence (see PARA 22) is a 'sentence' for these purposes: *A-G's Reference (No 22 of 1992)* [1994] 1 All ER 105, (1993) 97 Cr App Rep 275, CA; *R v L (Deferred Sentence)* [1999] 1 WLR 479, sub nom *A-G's Reference (Nos 36 and 38 of 1998)*, *R v Dean L and Jones* [1999] 2 Cr App Rep (S) 7, CA.

2 For these purposes any two or more sentences are to be treated as passed in the same proceeding if they would be so treated for the purposes of the Criminal Appeal Act 1988 s 11 (see PARAS 46, 48): Criminal Justice Act 1988 s 36(3) (amended by the Criminal Justice Act 2003 Sch 36 para 96(a)).

3 Criminal Justice Act 1988 s 36(1)(a). As to when sentencing has been unduly lenient for these purposes see s 36(2); and PARA 56.

4 Criminal Justice Act 1988 s 36(1)(b). As to the cases which are susceptible to review (ie cases to which Pt IV (ss 35, 36) applies) see the Criminal Justice Act 1988 s 35(3), (4); and PARA 59.

5 Criminal Justice Act 1988 s 36(1). For the court's powers on review see PARA 57. Where the court grants leave for such a reference, its powers are not confined to increasing the sentence: *A-G's Reference (No 4 of 1989)* [1990] 1 WLR 41, 90 Cr App Rep 366, CA. Subject to rules of court, the jurisdiction of the Court of Appeal under the Criminal Justice Act 1988 s 36 must be exercised by the criminal division of the court: s 35(2).

6 *A-G's Reference (No 14 of 2003) (R v Sheppard)* [2003] EWCA Crim 1459, [2003] LS Gaz R 35, (2003) Times, 18 April.

7 Criminal Justice Act 1988 s 36(4).

UPDATE

55 Reference of sentence for review

NOTE 6--See *A-G's Reference (No 79 of 2009)*; *R v Haines* [2010] EWCA Crim 187, (2010) Times, 17 March (the Court of Appeal will not review a sentence on the basis of material that could have been put before the judge).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/56. What amounts to 'undue leniency'.

56. What amounts to 'undue leniency'.

The Attorney General may conclude that a sentence is 'unduly lenient' and therefore susceptible to review¹ if it falls outside the range of sentences which in the light of all the relevant factors (including any sentencing guidelines²) could reasonably be considered appropriate³. A sentence may be unduly lenient if the sentencing court has imposed a community order where a custodial sentence would be more appropriate⁴, has imposed a custodial sentence which is shorter than is appropriate⁵, or has failed to make an ancillary order, such as a confiscation order, when such an order should have been made⁶. The sentence may also be unduly lenient if the sentencing judge erred in law as to his sentencing powers⁷ or has failed to impose a mandatory sentence, such as a sentence of life imprisonment, custody or detention for life for public protection⁸, a required minimum sentence for possessing a prohibited weapon⁹ or a prescribed custodial sentence for committing a third class A drug trafficking offence¹⁰ or third domestic burglary¹¹.

¹ The condition specified in the Criminal Justice Act 1988 s 36(1)(a) (see PARA 55) may be satisfied: s 36(2). These provisions are without prejudice to the generality of s 36(1): s 36(2).

² As to sentencing principles and guidelines see PARA 615 et seq.

³ See *A-G's Reference (No 4 of 1989)* [1990] 1 WLR 41, 90 Cr App Rep 366, CA.

⁴ See eg *A-G's Reference (No 67 of 2008)*, *R v Edwards* [2009] EWCA Crim 132, [2009] 2 Cr App Rep (S) 428.

⁵ See eg *A-G's Reference (Nos 56, 57 and 58 of 2008)*, *R v Waller* [2009] EWCA Crim 235, [2009] 2 Cr App Rep (S) 356.

⁶ See eg *A-G's Reference (Nos 114, 115, 116, 144, 145 of 2002)* [2003] EWCA Crim 3374, 147 Sol Jo LB 1400, [2003] All ER (D) 379 (Nov).

⁷ Criminal Justice Act 1988 s 36(2)(a) (s 36(2)(a), (b) substituted by the Criminal Justice Act 2003 Sch 32 paras 45, 46).

⁸ Criminal Justice Act 1988 s 36(2)(b)(iii) (as substituted (see note 7); amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 22, 23). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 4.

⁹ Criminal Justice Act 1988 s 36(2)(b)(i), (iv) (as substituted (see note 7); Criminal Justice Act 1988 s 36(2)(b)(iv) added by the Violent Crime Reduction Act 1968 Sch 1 para 3). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

¹⁰ Criminal Justice Act 1988 s 36(2)(b)(ii) (as substituted: see note 7). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

¹¹ Criminal Justice Act 1988 s 36(2)(b)(ii) (as substituted: see note 7). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

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57. Powers of court on review.

Where a case has been referred to the Court of Appeal for review¹ the court may:

- 194 (1) quash any sentence passed on the person whose sentencing has been referred in the proceeding in question²; and
- 195 (2) in place of it pass such sentence as the court thinks appropriate for the case and as the court below had power to pass when dealing with that person³.

The court may only increase sentences which it considers unduly lenient; it is not enough that the sentence was less than the court would have imposed⁴. The court will not intervene unless it is shown that there has been a substantial error in principle in the sentence, so that public confidence would be damaged if the sentence was not altered⁵. It is the normal practice of the Court of Appeal, when increasing an unduly lenient sentence, to allow some discount from what it considers the sentence should have been⁶.

The term of any sentence passed by the Court of Appeal begins to run, unless the court otherwise directs, from the time when it would have begun to run if passed in the proceedings in relation to which the reference was made⁷, and the time during which a person whose case has been so referred for review is in custody pending its review and pending any reference to the Supreme Court⁸ must be reckoned as part of the term of any sentence to which he is for the time being subject⁹.

¹ See under the Criminal Justice Act 1988 s 36(1): see PARA 55. As to the cases which may be referred see PARA 59.

² Criminal Justice Act 1988 s 36(1)(i). As to the sentences which may be reviewed see PARA 58. On hearing a reference and quashing a sentence, the Court of Appeal has the same powers as a sentencing court to remand a defendant in custody pending medical reports: *A-G's Reference (No 129 of 2004)*; *R v Ssan* [2005] EWCA Crim 363, [2005] All ER (D) 159 (Feb).

³ Criminal Justice Act 1988 s 36(1)(ii). The power of the court to pass sentence on a person may be exercised although he is not present: Sch 3 para 8. For examples of sentences which have been increased on review see *A-G's Reference (No 16 of 2007)*; *R v Hargreaves* [2007] EWCA Crim 1229, [2008] 1 Cr App Rep (S) 152 (supplier of stolen vehicles for use in a robbery guilty of conspiracy to rob); *A-G's Reference (No 68 of 2007)*; *R v Hawkes* [2007] EWCA Crim 2634, (2007) Times, 11 December, [2007] All ER (D) 328 (Oct) (violent drug dealer keeping weapons on CCTV-controlled premises); *A-G's Reference (No 65 of 2008)*; *R v Pearson* [2008] EWCA Crim 3135, [2009] 2 Cr App Rep (S) 297 (causing death by dangerous driving). For an example of a sentence which was not increased see *A-G's Reference (Nos 32, 33 and 34 of 2007)*; *R v Bates* [2007] EWCA Crim 1375, [2008] 1 Cr App Rep (S) 187 (two years' imprisonment for robbery with minimal violence not unduly lenient).

⁴ *A-G's Reference (No 4 of 1989)* [1990] 1 WLR 41, 90 Cr App Rep 366, CA; *A-G's Reference (No 132 of 2001)*, *R v Johnson* [2002] EWCA Crim 1418, [2003] 1 Cr App Rep (S) 190. Nevertheless, it is open to the court to increase a sentence although it is in accordance with the tariff for the offence in question: *A-G's Reference (No 14 of 1998)* (*R v McGregor*) [1999] 1 Cr App Rep (S) 205, CA.

The question of whether a sentence is unduly lenient must be decided not in the light of what has been alleged but what has been proved: *R v Highfield*; *A-G's Reference (No 95 of 1998)* (1999) Times, 21 April, CA. The Court of Appeal cannot take into account new material which was not available to the sentencing judge: *A-G's Reference (No 19 of 2005)*, *R v Bowden* [2006] EWCA Crim 785, (2006) Times, 3 May. Offender rehabilitation is a proper consideration in sentencing and a lenient sentence based on such considerations should not necessarily be increased: see *A-G's Reference (No 92 of 2007)*; *R v Harding* [2007] EWCA Crim 2634, (2007) Times, 11 December, [2007] All ER (D) 328 (Oct).

5 *A-G's Reference (No 5 of 1989) (R v Hill-Trevor)* (1989) 90 Cr App Rep 358, CA; *A-G's Reference (No 132 of 2001), R v Johnson* [2002] EWCA Crim 1418, [2003] 1 Cr App Rep (S) 190.

6 See eg *A-G's References (Nos 19, 20, 21 of 2001)* [2001] EWCA Crim 1432, [2002] 1 Cr App Rep (S) 136; *A-G's Reference (Nos 108 and 109 of 2002) (R v Fielding, R v Adgebenle)* [2003] EWCA Crim 968, [2003] 2 Cr App Rep (S) 608; *A-G's Reference (No 59 of 2006); R v D* [2006] EWCA Crim 2096, [2006] All ER (D) 240 (Nov). This is commonly called the 'double jeopardy element', and it does not apply where a reference relates to a case in which the judge made an order under the Criminal Justice Act 2003 s 269(2) (determination of minimum term in relation to mandatory life sentence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90) or, as from a day to be appointed, the Powers of Criminal Courts (Sentencing) Act 2000 s 82A (determination of tariffs: see PARA 33): see the Criminal Justice Act 1988 s 36(3A), (3B) (s 36(3A) added by the Criminal Justice Act 2003 s 272(1); Criminal Justice Act 1988 s 36(3A) prospectively substituted, s 36(3B) prospectively added, by the Criminal Justice and Immigration Act 2008 s 46(1), (2)). At the date at which this volume states the law no day had been appointed for this purpose. See also *A-G's Reference (No 82 of 2000) (R v Vinnicombe)* [2001] EWCA Crim 65, [2001] 2 Cr App Rep (S) 289; and, in relation to transitional cases under the Criminal Justice Act 2003 s 269(2), the Criminal Justice Act 2003 (Reviews of Sentencing) (Consequential and Supplementary Provisions) Order 2007, SI 2007/1762. The element of double jeopardy is also of limited application where the offence is so serious that the defendant already had a lengthy period of imprisonment to serve: *A-G's Reference (Nos 14 and 15 of 2006)* [2006] EWCA Crim 1335, [2007] 1 All ER 718, [2007] 1 Cr App Rep (S) 215.

7 Criminal Justice Act 1988 Sch 3 para 10 (Sch 3 paras 5, 10 amended by the Constitutional Reform Act 2005 Sch 9 para 48).

8 See PARA 66. As to the Supreme Court see PARA 53 note 1.

9 Criminal Justice Act 1988 Sch 3 para 5 (as amended: see note 7).

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58. Sentences which may be reviewed.

In the context of a referral of a sentence to the Court of Appeal for review¹ 'sentence' includes any order made by a court when dealing with an offender² including, in particular:

- 196 (1) a hospital order³ with or without a restriction order⁴;
- 197 (2) a hospital direction and a limitation direction⁵;
- 198 (3) a recommendation for deportation⁶;
- 199 (4) a confiscation order⁷ and an order varying such an order⁸;
- 200 (5) a declaration of relevance⁹ as respects an offence relating to a football match¹⁰; and
- 201 (6) an order for the forfeiture or suspension¹¹ of a personal licence to supply alcohol¹².

In addition, the following orders have been held to be appealable under the provisions relating to appeals against sentence¹³ and, by extension¹⁴, may therefore be considered reviewable for these purposes:

- 202 (a) an order that the defendant pay prosecution costs¹⁵;
- 203 (b) restitution and compensation orders¹⁶;
- 204 (c) an order for disqualification for holding or obtaining a driving licence¹⁷;
- 205 (d) an order for driving test made on application for removal of disqualification, being an order in 'subsequent proceedings'¹⁸;
- 206 (e) an order revoking parole licence on conviction of an offence¹⁹;
- 207 (f) binding over to come up for judgment²⁰;
- 208 (g) an order for deferment of sentence²¹; and
- 209 (h) a period specified²² in connection with a life sentenced passed in a case when the sentence is not fixed by law²³.

The following are not appealable and may therefore be considered reviewable²⁴:

- 210 (i) an order²⁵ for the repayment of the costs of representation by Criminal Defence Service²⁶; and
- 211 (ii) binding over to keep the peace²⁷.

1 le for the purposes of the Criminal Justice Act 1988 Pt IV (ss 35-36): see PARA 55 et seq.

2 Criminal Appeal Act 1968 s 50(1) (s 50(1) substituted by the Criminal Justice Act 1993 Sch 5 Pt 1); Criminal Justice Act 1988 s 35(6).

3 le under the Mental Health Act 1983 Pt III (ss 35-55): see PARA 332 et seq; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491.

4 Criminal Appeal Act 1968 s 50(1)(a) (as substituted: see note 2). As to restriction orders see PARA 337.

5 Criminal Appeal Act 1968 s 50(1)(bb) (as substituted (see note 2); added by the Crime (Sentences) Act 1997 Sch 4 para 6(1)(a)). See the Mental Health Act 1983 Pt III; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 490.

6 Criminal Appeal Act 1968 s 50(1)(c) (as substituted: see note 2). See **PARA 9**; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) **PARA 160** et seq.

7 Ie an order under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) (see **PARA 391** et seq), an order under the Drug Trafficking Act 1994 other than one made by the High Court (provisions repealed: see **PARA 474**) or an order under the Criminal Justice Act 1988 Pt VI (ss 71-103) (repealed: see **PARA 460** et seq).

8 Criminal Appeal Act 1968 s 50(1)(ca), (cb), (d)-(g) (as substituted (see note 2); s 50(1)(ca), (cb) added by the Proceeds of Crime Act 2002 Sch 11 paras 1, 4(1), (3); Criminal Appeal Act 1968 s 50(1)(d), (g) amended by the Drug Trafficking Act 1994 Schs 1, 2). An order made by the Crown Court varying a confiscation order made by the High Court by virtue of the Drug Trafficking Act 1994 s 19 (repealed) is reviewable under these provisions, and an order varying a confiscation order under the Proceeds of Crime Act 2002 is reviewable only if the varying order is made under s 21 (see **PARA 407**), s 22 (see **PARA 408**) or s 29 (see **PARA 415**): Criminal Appeal Act 1968 s 50(1)(cb), (g) (as so substituted and amended).

9 Ie within the meaning of the Football Spectators Act 1989 s 23: see **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) **PARA 112**.

10 Criminal Appeal Act 1968 s 50(1)(h) (as substituted (see note 2); amended by the Violent Crime Reduction Act 2006 Sch 3 para 14(1), (2)).

11 Ie under the Licensing Act 2003 s 129(2): see **LICENSING AND GAMBLING** vol 67 (2008) **PARA 129**.

12 Criminal Appeal Act 1968 s 50(1)(i) (as substituted (see note 2); amended by the Licensing Act 2003 Sch 6 paras 38, 42).

13 Ie under the Criminal Appeal Act 1968 s 50(1): see notes 1-12.

14 See the Criminal Justice Act 1988 s 35(6); and note 2.

15 *R v Hayden* [1975] 2 All ER 558, 60 Cr App Rep 304, CA.

16 *R v Parker* [1970] 2 All ER 458, [1970] 1 WLR 1003, CA; *R v Brogan* [1975] 1 All ER 879, 60 Cr App Rep 279, CA. As to restitution orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 148; and **PARA 388**. As to compensation orders see s 130; and **PARA 375**.

17 *R v McNulty* [1965] 1 QB 437, [1964] 3 All ER 713, CA (decided under the Criminal Appeal Act 1907 s 21 (repealed)).

18 *R v Bentham* (1981) 3 Cr App Rep (S) 229.

19 *R v Welch* [1982] 2 All ER 824, 75 Cr App Rep 207, CA.

20 *R v Williams* [1982] 3 All ER 1092, 75 Cr App Rep 378, CA.

21 *A-G's Reference (No 22 of 1992)* [1994] 1 All ER 105, 97 Cr App Rep 275, CA; *R v L (Deferred Sentence)* [1999] 1 WLR 479, sub nom *A-G's References (Nos 36 and 38 of 1998)*, *R v Jones (William)* [1999] 2 Cr App Rep (S) 7, CA.

22 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A: see **PARA 33**.

23 *R v Dalton* [1995] QB 243, [1995] 2 Cr App Rep 340, CA.

24 See the text and notes 2, 13, 14.

25 Ie under the Access to Justice Act 1999 s 17: see **LEGAL AID** vol 65 (2008) **PARA 174**.

26 Criminal Appeal Act 1968 s 50(3) (added by the Access to Justice Act 1999 Sch 4 para 3).

27 *R v Randall* (1986) 8 Cr App Rep (S) 433, [1987] Crim LR 254, CA.

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59. Cases which may be referred.

The cases which may be referred to the Court of Appeal for review¹ are:

212 (1) any case in which sentence² is passed on a person for an offence triable only on indictment³;

213 (2) any case in which sentence is passed on a person for any of the following statutory offences:

1

1. (a) making threats to kill⁴;
2. (b) defilement of a girl aged between 14 and 17⁵;
3. (c) cruelty to persons under 16⁶;
4. (d) unlawful sexual intercourse with a girl under 16⁷;
5. (e) indecent assault on a woman or man⁸;
6. (f) indecent conduct with a child⁹;
7. (g) production or supply of a controlled drug¹⁰;
8. (h) possession of a controlled drug with intent to supply¹¹;
9. (i) cultivation of cannabis plant¹²;
10. (j) inciting a girl under 16 to have incestuous sexual intercourse¹³;
11. (k) specified customs offences involving the importation or exportation of controlled drugs or indecent images¹⁴;
12. (l) racially or religiously aggravated assault, criminal damage, public disorder or harassment¹⁵;

2

214 (3) any case in which sentence is passed on a person for any of the following statutory sexual offences which are triable either way (and thus not included under head (1) above)¹⁶:

3

13. (a) sexual assault¹⁷;
14. (b) causing a person to engage in sexual activity without consent¹⁸;
15. (c) sexual assault of a child aged under 13¹⁹;
16. (d) causing or inciting a child under 13 to engage in sexual activity²⁰;
17. (e) sexual activity with a child²¹;
18. (f) causing or inciting a child to engage in sexual activity²²;
19. (g) engaging in sexual activity in the presence of a child²³;
20. (h) causing a child to watch a sexual act²⁴;
21. (i) arranging or facilitating the commission of a child sex offence²⁵;
22. (j) meeting a child following sexual grooming²⁶;
23. (k) sexual activity with a child family member²⁷;
24. (l) paying for the sexual services of a child²⁸;
25. (m) causing or inciting child prostitution or pornography²⁹;
26. (n) controlling a child prostitute or a child involved in pornography³⁰;
27. (o) arranging or facilitating child prostitution or pornography³¹;
28. (p) causing or inciting prostitution for gain³²;
29. (q) trafficking into, out of or within the United Kingdom for sexual exploitation³³; and
30. (r) administering a substance with intent to commit a sexual offence³⁴,

4

- 215 (4) any case in which sentence is passed on a person for attempting to commit or inciting the commission of any of the offences (other than the racially or religiously aggravated offences³⁵) set out above³⁶; and
- 216 (5) any case tried on indictment either following a notice of transfer³⁷ or in which one or more counts in respect of which sentence is passed relates to a charge which was dismissed³⁸ and on which further proceedings were brought by means of the preferment of a voluntary bill of indictment³⁹.

1 le under the Criminal Justice Act 1988 Pt IV (ss 35, 36): see PARA 55.

2 As to the sentences which may be reviewed see PARA 58.

3 Criminal Justice Act 1988 s 35(1), (3)(b)(i) (s 35(3), (4) amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 34). For these purposes an offence which is triable only on indictment when committed by an adult is an offence 'triable only on indictment', despite the fact that a person under 18 may be tried summarily for it by virtue of the Magistrates' Courts Act 1980 s 24 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105): *A-G's Reference (No 3 of 1993)* (1993) 98 Cr App Rep 84, CA. In connection with cases not qualifying for review by virtue of the Criminal Justice Act 1988 s 35(3)(b)(i) see the text and notes 16-34.

4 Criminal Justice Act 1988 s 35(3)(b)(ii), (4) (as amended: see note 3); Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, art 2, Sch 1 para 2(a). As to this offence see the Offences against the Person Act 1861 s 16; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 105.

5 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(b). This is an offence under the Criminal Law Amendment Act 1885 s 5(1) (repealed).

6 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(c). As to this offence see the Children and Young Persons Act 1933 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 143.

7 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(d). This is an offence under the Sexual Offences Act 1956 s 6 (repealed).

8 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(d). This is an offence under the Sexual Offences Act 1956 s 14 or s 15 or the Offences against the Person Act 1861 s 52 (all repealed) or corresponding Northern Ireland enactments.

9 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(e). This is an offence under the Indecency with Children Act 1960 s 1 (repealed) or the corresponding Northern Ireland enactment.

10 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(f). As to this offence see the Misuse of Drugs Act 1971 s 4(2) or (3); and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 249.

11 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(f). As to this offence see the Misuse of Drugs Act 1971 s 5(3); and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 252.

12 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(f). As to this offence see the Misuse of Drugs Act 1971 s 6(2); and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 254.

13 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(g). This is an offence under the Criminal Law Act 1977 s 54 (repealed) or the corresponding Northern Ireland enactment.

14 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(h). By virtue of Sch 1 para 2(h) the specified offences are offences under the Customs and Excise Management Act 1979 s 50(2) or (3), s 68(2) or s 170(1) or (2) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 994, 1029, 1178) in so far as those offences are committed in connection with a prohibition or restriction on importation or exportation of either:

- 43 (1) a controlled drug within the meaning of the Misuse of Drugs Act 1971 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770), such prohibition or restriction

having effect by virtue of s 3 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 248);
or

- 44 (2) in so far as they relate to or depict a person under the age of 16, indecent or obscene prints, paintings, photographs, books, cards, lithographic or other engravings, or any other indecent or obscene articles, such prohibition and restriction having effect by virtue of the Customs Consolidation Act 1876 s 42 (see **TRADE AND INDUSTRY** vol 97 (2010) PARA 808).

15 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 2(i). As to these offences see the Crime and Disorder Act 1998 ss 29-32; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 155-156, 335, 561.

16 The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3 applies the Criminal Justice Act 1988 Pt IV (to the extent that does not apply by virtue of s 35(3)(b)(i) (see the text and note 3)) to any case in which sentence is passed on a person for any of the sexual offences listed in the text and notes 17-34.

17 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(a). As to this offence see the Sexual Offences Act 2003 s 3; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 169.

18 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(b). As to this offence see the Sexual Offences Act 2003 s 4; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 171.

19 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(c). As to this offence see the Sexual Offences Act 2003 s 7; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 170.

20 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(d). As to this offence see the Sexual Offences Act 2003 s 8; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 172.

21 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(e). As to this offence see the Sexual Offences Act 2003 s 9; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 173.

22 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(f). As to this offence see the Sexual Offences Act 2003 s 10; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 174.

23 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(g). As to this offence see the Sexual Offences Act 2003 s 11; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 175.

24 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(h). As to this offence see the Sexual Offences Act 2003 s 12; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 176.

25 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(i). As to this offence see the Sexual Offences Act 2003 s 14; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 178.

26 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(j). As to this offence see the Sexual Offences Act 2003 s 15; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 179.

27 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(k). As to this offence see the Sexual Offences Act 2003 s 25; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 191.

28 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(l). As to this offence see the Sexual Offences Act 2003 s 47; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 215.

29 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(m). As to this offence see the Sexual Offences Act 2003 s 48; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216.

30 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(n). As to this offence see the Sexual Offences Act 2003 s 49; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216.

31 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(o). As to this offence see the Sexual Offences Act 2003 s 50; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216.

32 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(p). As to this offence see the Sexual Offences Act 2003 s 52; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217.

33 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(q)-(s). As to this offence see the Sexual Offences Act 2003 ss 57-59; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 228.

34 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 3(t). As to this offence see the Sexual Offences Act 2003 s 61; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 230.

35 Ie the offences under the Crime and Disorder Act 1998 ss 29-32: see the text and note 15.

36 Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, Sch 1 para 4.

37 Ie a notice given under the Criminal Justice Act 1987 s 4 (prospectively repealed) by an authority designated for that purpose by s 4(2) (prospectively repealed): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105.

38 Ie under the Criminal Justice Act 1987 s 6 (prospectively repealed): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105.

39 Criminal Justice Act 1988 s 35(3)(a) (as amended: see note 3); Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006, SI 2006/1116, art 2, Sch 1 para 1.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/60. Applications for referral.

60. Applications for referral.

If the Attorney General wishes to refer a case to the Court of Appeal for a review of the sentence¹ he must serve on the Registrar of Criminal Appeals an application for permission to refer the sentence, and a notice of reference, not more than 28 days after the last of the sentences in that case². The application for permission must be in the appropriate form³ and must:

- 217 (1) give details of the defendant affected, the date and place of the relevant Crown Court decision and the relevant verdict and sentencing⁴;
- 218 (2) explain why that sentencing appears to the Attorney General unduly lenient⁵, concisely outlining each argument in support⁶; and
- 219 (3) include the application for permission to refer the case to the court⁷.

The notice of reference must:

- 220 (a) include the same details and explanation as the application for permission to refer the case⁸;
- 221 (b) summarise the relevant facts⁹; and
- 222 (c) identify any relevant authorities¹⁰.

1 lie under the Criminal Justice Act 1988 s 36: see PARA 55. As to the sentences which may be reviewed see PARA 58. For the general procedural rules governing appeals to the Court of Appeal see CrimPR Pt 65; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARAS 1923-1932.

2 Criminal Justice Act 1988 Sch 3 para 1; CrimPR 70.1(b), 70.2(1)(a), (2). Where a sentence of the Crown Court is varied under the Powers of Criminal Courts (Sentencing) Act 2000 s 155 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1357), the sentence is regarded for the purposes of the Criminal Justice Act 1988 Sch 3 para 1 as imposed on the day on which it is so varied: see the Powers of Criminal Courts (Sentencing) Act 2000 s 155(6). The Court of Appeal will not usually give leave to refer a deferred sentence unless the application is made within 28 days from the date on which the sentence was deferred: *R v Barrett, A-G's Reference (No 118 of 2004)* [2004] EWCA Crim 3220, [2005] 2 Cr App Rep (S) 97, (2004) Times, 29 November.

Where the court gives the Attorney General permission to refer a sentencing case, it may treat the application for permission as the notice of reference: CrimPR 70.3(5).

3 CrimPR 70.3(1).

4 CrimPR 70.3(3)(a).

5 As to what amounts to 'undue leniency' see PARA 56.

6 CrimPR 70.3(3)(b). Any draft reference should be given to counsel who represented the prosecution at trial, so that he can make any observations on it while the details are fresh in his mind: *A-G's Reference (No 10 of 2003)*; *R v Jutue* (2003) Times, 30 May.

7 CrimPR 70.3(3)(c).

8 CrimPR 70.3(4)(a).

9 CrimPR 70.3(4)(b).

10 CrimPR 70.3(4)(c).

UPDATE

60-63 Applications for referral ... Variation or withdrawal of application or reference

CrimPR Pt 70 now Criminal Procedure Rules 2010, SI 2010/60, Pts 65, 70.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/61. Notifying the defendant.

61. Notifying the defendant.

If the Attorney General applies for permission to refer a case to the Court of Appeal for a review of the sentence¹ the Registrar of Criminal Appeals must serve on the defendant a notice of reference and an application for permission to refer the case², and must give the defendant notice that the outcome of the reference may make a difference to that sentencing, and in particular may result in a more severe sentence³, and that the defendant may serve a respondent's notice⁴.

1 le under the Criminal Justice Act 1988 s 36: see PARA 55; and as to applications for referral see PARA 60. As to the sentences which may be reviewed see PARA 58.

2 CrimPR 70.4(1). As to notices of reference and applications for permission see PARA 60.

3 CrimPR 70.4(3)(a).

4 CrimPR 70.4(3)(b). As to the respondent's notice see PARA 62.

UPDATE

60-63 Applications for referral ... Variation or withdrawal of application or reference

CrimPR Pt 70 now Criminal Procedure Rules 2010, SI 2010/60, Pts 65, 70.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/62. The defendant's notice.

62. The defendant's notice.

A defendant on whom the Registrar of Criminal Appeals serves a reference or an application for permission to refer a sentencing case¹ may serve a respondent's notice and must do so if he wants to make representations to the court or the court so directs². The notice must be served on the Attorney General and the Registrar³ not more than 14 days after the Registrar serves the application or, as the case may be, a direction to do so⁴, and must:

- 223 (1) say if the respondent wants to make representations at the hearing of the application or reference⁵; and
- 224 (2) include or attach any application, with reasons, for:
 - 31. (a) an extension of time within which to serve the respondent's notice⁶;
 - 32. (b) permission to attend a hearing that the respondent does not have a right to attend⁷; or
 - 33. (c) a direction to attend in person a hearing that the respondent could attend by live link, if the respondent is in custody⁸.

¹ See under the Criminal Justice Act 1988 s 36: see PARA 55. As to applications for referral see PARA 60; and as to the duty to notify the defendant of a referral see PARA 61.

² CrimPR 70.5(1). Rules of court may enable a person to whose sentencing a reference or application relates to obtain from the Registrar any documents or things, including copies or reproductions of documents, required for the reference or application and may authorise the Registrar to make charges for them in accordance with scales and rates fixed from time to time by the Treasury: Criminal Justice Act 1988 Sch 3 para 3. At the date at which this volume states the law no such rules were in force.

³ CrimPR 70.5(2).

⁴ CrimPR 70.5(3)(b).

⁵ CrimPR 70.5(5)(a).

⁶ CrimPR 70.5(5)(b)(i).

⁷ CrimPR 70.5(5)(b)(ii).

⁸ CrimPR 70.5(5)(b)(iii).

UPDATE

60-63 Applications for referral ... Variation or withdrawal of application or reference

CrimPR Pt 70 now Criminal Procedure Rules 2010, SI 2010/60, Pts 65, 70.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/63. Variation or withdrawal of application or reference.

63. Variation or withdrawal of application or reference.

If the Attorney General wants to vary or withdraw a notice of reference or an application for permission to refer a sentencing to the Court of Appeal for review¹ he may vary or withdraw the notice or application without the court's permission by serving notice on the Registrar of Criminal Appeals and the defendant before any hearing of the reference or application². However, at any such hearing he may only vary or withdraw that notice or application with the court's permission³.

1 He under the Criminal Justice Act 1988 s 36: see PARA 55. As to notices of reference and applications for permission see PARA 60.

2 CrimPR 70.6(1), (2)(a).

3 CrimPR 70.6(3).

UPDATE

60-63 Applications for referral ... Variation or withdrawal of application or reference

CrimPR Pt 70 now Criminal Procedure Rules 2010, SI 2010/60, Pts 65, 70.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/64. Registrar's powers and duties.

64. Registrar's powers and duties.

If the Registrar of Criminal Appeals is given notice of a reference or application to the Court of Appeal¹, he must:

225 (1) take all necessary steps for obtaining a hearing of the reference or application²; and

226 (2) obtain and lay before the court in proper form all documents, exhibits and other things which appear necessary for the proper determination of the reference or application³.

1 He under the Criminal Justice Act 1988 s 36: see PARA 55. As to notices of reference and applications for permission see PARA 60.

2 Criminal Justice Act 1988 Sch 3 para 2(a).

3 Criminal Justice Act 1988 Sch 3 para 2(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/65. Defendant's right to be present at hearing.

65. Defendant's right to be present at hearing.

A person whose sentencing is the subject of a reference to the Court of Appeal¹ is entitled to be present, if he wishes it, on the hearing of the reference, although he may be in custody². A person in custody is not, however, entitled to be present on an application by the Attorney General for leave to refer a case, or on any proceedings preliminary or incidental to a reference, unless the Court of Appeal gives him leave to be present³. The court or the Registrar of Criminal Appeals may direct that such a respondent is to attend a hearing by live link⁴.

¹ See under the Criminal Justice Act 1988 s 36: see PARA 55.

² Criminal Justice Act 1988 Sch 3 para 6. Where on a reference to the Court of Appeal under s 36 the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Court, he is entitled to his costs, that is to say to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this provision must be ascertained, as soon as practicable, by the registrar of criminal appeals: Sch 3 para 11.

³ Criminal Justice Act 1988 Sch 3 para 7; CrimPR 70.7(1) (a respondent who is in custody has a right to attend a hearing in public unless it is a hearing preliminary or incidental to a reference, including the hearing of an application for permission to refer a sentencing case). The court may pass sentence although the offender is not present: see PARA 66.

⁴ CrimPR 70.7(2).

UPDATE

65 Defendant's right to be present at hearing

TEXT AND NOTES 3, 4--CrimPR 70.7 now Criminal Procedure Rules 2010, SI 2010/60, r 70.7.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/2. APPEAL AND REVIEW OF SENTENCES/(2) REVIEW OF UNDULY LENIENT SENTENCES/66. Further reference to Supreme Court.

66. Further reference to Supreme Court.

Where the Court of Appeal has concluded its review of a case referred to it¹ the Attorney General or the person to whose sentencing the reference relates may refer a point of law involved in any sentence passed on that person in the proceeding to the Supreme Court² for its opinion, and that court must consider the point and give its opinion on it accordingly and either remit the case to the Court of Appeal to be dealt with or deal with it itself³. Such a reference may be made only with the leave of the Court of Appeal or the Supreme Court⁴, and leave may not be granted unless it is certified by the Court of Appeal that the point of law is of general public importance and it appears to the Court of Appeal or the Supreme Court (as the case may be) that the point is one which ought to be considered by that Court⁵. For the purpose of dealing with a case under this provision the Supreme Court may exercise any powers of the Court of Appeal⁶.

1 le under the Criminal Justice Act 1988 s 36: see PARA 55.

2 As to the Supreme Court see PARA 53 note 1.

3 Criminal Justice Act 1988 s 36(5) (s 36(5)-(7), Sch 3 amended by the Constitutional Reform Act 2005 Sch 9 para 48). The Criminal Appeal Act 1968 s 35(1) (composition of House for appeals: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1974) applies also in relation to any proceedings of the Supreme Court under this provision: Criminal Justice Act 1988 s 36(5) (as so amended). A person whose sentencing is the subject of a reference to the Supreme Court under s 36(5) and who is detained pending the hearing of that reference is not entitled to be present on the hearing of the reference or of any proceeding preliminary or incidental thereto except where an order of the Supreme Court authorises him to be present, or where the Supreme Court or the Court of Appeal, as the case may be, gives him leave to be present: Sch 3 para 9 (as so amended). Where on a reference to the Supreme Court under s 36(5) the person whose sentencing is the subject of the reference appears by counsel for the purpose of presenting any argument to the Supreme Court, he is entitled to his costs, that is to say to the payment out of central funds of such funds as are reasonably sufficient to compensate him for expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this provision must be ascertained, as soon as practicable, by the registrar of criminal appeals or, as the case may be, such officer as may be prescribed by order of the Supreme Court: Sch 3 para 11 (as so amended).

4 An application to the Court of Appeal for leave to refer a case to the Supreme Court under the Criminal Justice Act 1988 s 36(5) must be made within the period of 14 days beginning with the date on which the Court of Appeal concludes its review of the case; and an application to the Supreme Court for leave must be made within the period of 14 days beginning with the date on which the Court of Appeal concludes its review or refuses leave to refer the case to the Supreme Court: Criminal Justice Act 1988 Sch 3 para 4 (as amended: see note 3).

5 Criminal Justice Act 1988 s 36(6) (as amended: see note 3).

6 Criminal Justice Act 1988 s 36(7) (as amended: see note 3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS/(1) SERIOUS OFFENCES AND SERIOUS HARM/67. Offences pre- and post-4 April 2005.

3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS

(1) SERIOUS OFFENCES AND SERIOUS HARM

67. Offences pre- and post-4 April 2005.

The sentencing of dangerous offenders is now principally governed by provisions of the Criminal Justice Act 2003¹, which came into force on 4 April 2005² and accordingly apply only to offences committed on or after that date. The sentencing of dangerous offenders in respect of serious offences committed before that date continues to be governed by the former statutory provisions which were repealed and replaced by the Criminal Justice Act 2003³ and which have been expressly saved⁴ in relation to pre-4 April 2005 offences.

1 Ie the Criminal Justice Act 2003 Pt 12 Ch 5 (ss 224-236): see PARA 68 et seq.

2 Ie by virtue of the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 1 para 18.

3 Ie, in particular, the Powers of Criminal Courts Act 2000 s 80 (length of discretionary sentence: see PARA 34), s 85 (extended sentence for violent or sexual offences: see PARA 76) and s 109 (life sentence for second serious offence: see PARA 77).

4 Ie by virtue of the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS/(1) SERIOUS OFFENCES AND SERIOUS HARM/68. Serious offences.

68. Serious offences.

An offence is a 'serious offence' for the purposes of the statutory provisions governing the sentencing of dangerous offenders¹ if, and only if, it is a violent and / or sexual offence specified for those purposes² and is usually³ punishable in the case of a person aged 18 or over by either:

- 227 (1) imprisonment for life⁴;
- 228 (2) imprisonment for a determinate period of ten years or more⁵; or
- 229 (3) until a day to be appointed⁶, in the case of a person aged at least 18 but under 21, custody for life or detention in a young offender institution⁷ for a determinate period of ten years or more⁸.

1 le for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 5 (ss 224-236): see PARAS 73-77 (offenders generally), 80, 82-84, 87, 88 (young offenders).

2 Criminal Justice Act 2003 s 224(1), (2)(a). As to the violent and sexual offences specified for these purposes see Schs 15, 15A; and PARAS 70-71.

3 le apart from the Criminal Justice Act 2003 s 225: see PARAS 73-74.

4 Criminal Justice Act 2003 s 224(2)(b)(i).

5 Criminal Justice Act 2003 s 224(2)(b)(ii).

6 le until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force.

7 See PARA 85 et seq.

8 Criminal Justice Act 2003 s 224(2)(b)(i), (ii) (amended by SI 2005/643).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS/(1) SERIOUS OFFENCES AND SERIOUS HARM/69. Significant risk of serious harm.

69. Significant risk of serious harm.

For the purposes of the statutory provisions governing the sentencing of dangerous offenders¹ 'serious harm' means death or serious personal injury, whether physical or psychological². Where a person has been convicted of a specified offence³ and it falls to a court⁴ to assess⁵ whether there is a significant risk to members of the public of serious harm occasioned by the commission by that person of further such offences the court in making the assessment:

- 230 (1) must take into account all such information as is available to it about the nature and circumstances of the offence⁶;
- 231 (2) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world⁷;
- 232 (3) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned above forms part⁸; and
- 233 (4) may take into account any information about the offender which is before it⁹.

'Significant risk' to members of the public from serious harm by the commission of further specified offences requires significant risk to be shown in relation to two matters: the commission of further specified, but not necessarily serious, offences; and the causing thereby of serious harm to members of the public¹⁰. These provisions do not allow the court to decide that a defendant is guilty of separate offences with which he has not been charged¹¹, although a court is not precluded from considering evidence of previous misconduct which would amount to a criminal offence but for which the offender has not been convicted¹².

1. For the purposes of the Criminal Justice Act 2003 Pt 12 Ch 5 (ss 224-236): see PARAS 73-77 (offenders generally), 80, 82-84, 87, 88 (young offenders).

2. Criminal Justice Act 2003 s 224(3).

3. See PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

4. As to the meaning of 'court' see PARA 1 note 1.

5. For under any of the Criminal Justice Act 2003 ss 225-228: see PARA 73 et seq.

6. Criminal Justice Act 2003 s 229(1), (2)(a) (s 229(2) amended, s 229(2)(aa), (2A) added, by the Criminal Justice and Immigration Act 2008 s 17, Sch 28 Pt 2).

7. Criminal Justice Act 2003 s 229(2)(aa) (as added: see note 6). Such offences need not be the 'specified' offences referred to in note 3: a pattern of minor previous offences of gradually escalating seriousness may be significant for establishing an offender's dangerousness: see *R v Johnson* [2006] EWCA Crim 2486 at [10], [2007] 1 All ER 1237 at [10], [2007] 1 WLR 585 at [10]. The reference in the Criminal Justice Act 2003 s 229(2)(aa) to a 'conviction by a court' includes a reference to a conviction of an offence in any service disciplinary proceedings and a conviction of a service offence within the meaning of the Armed Forces Act 2006 ('conviction' here including anything that under s 376(1), (2) (see **ARMED FORCES**) is to be treated as a conviction): Criminal Justice Act 2003 s 229(2A) (as so added; s 229(2A) amended, s 229(2B) added, by the Coroners and Justice Act 2009 Sch 22 para 95). For this purpose 'service disciplinary proceedings' means any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 1 et seq) (whether before a court-martial or before any other court or person authorised thereunder to award a punishment in respect of any offence) and any proceedings before a Standing Civilian Court (see **ARMED**

FORCES vol 2(2) (Reissue) PARA 520 et seq); and 'conviction' includes the recording of a finding that a charge in respect of the offence has been proved: Criminal Justice Act 2003 s 229(2B) (as so added).

8 Criminal Justice Act 2003 s 229(2)(b) (as amended: see note 6). It is not a prerequisite to a finding of dangerousness under s 229 that the offender should be an individual with previous convictions -- a man of good character may properly qualify under these provisions -- but nor does the existence of previous offences compel such a finding: *R v Johnson* [2006] EWCA Crim 2486 at [7], [10], [2007] 1 All ER 1237 at [7], [10], [2007] 1 WLR 585 at [7], [10]. There is also no reason in principle why an offence to be taken into consideration which is of a more serious nature than the offence charged should not result in a higher sentence than otherwise would be the case: *R v Lavery* [2008] EWCA Crim 2499, [2009] 3 All ER 295, 172 JP 561. See also *R v S*; *R v A*; *R v C* [2008] EWCA Crim 2789, [2009] 2 Cr App Rep (S) 128, [2008] All ER (D) 254 (Nov) (practice of not applying provisions relating to sentence of imprisonment for public protection where conduct encompassed within offences committed before creation of that sentence is of greater gravity than that of later offences unsound).

9 Criminal Justice Act 2003 s 229(2)(c). Such information might include social and economic factors in relation to the defendant including accommodation, employability, education, associates, relationships and drug or alcohol abuse, and the defendant's attitude towards offending and supervision: *R v Lang* [2005] EWCA Crim 2864, [2006] 2 All ER 410, [2006] 1 WLR 2509. See also *A-G's Reference (No 145 of 2006)*; *R v Carter* [2007] EWCA Crim 692, (2007) Times, 20 March [2007] All ER (D) 86 (Mar), (pre-sentence report should be obtained when considering risk offender poses to the public); and *R v Frota* [2007] EWCA Crim 2602, [2007] All ER (D) 442 (Nov).

10 *R v Lang* [2005] EWCA Crim 2864, [2006] 2 All ER 410, [2006] 1 WLR 2509 (the risk must be 'significant' ie 'noteworthy, of considerable amount or importance'); *R v Johnson* [2006] EWCA Crim 2486 at [5]-[6], [2007] 1 All ER 1237 at [5]-[6], [2007] 1 WLR 585 at [5]-[6]. The fact that no actual harm has been caused by the offender to date does not mean that the risk he will cause serious harm in the future is negligible (*R v Johnson* at [10]; *R v Watty* [2007] EWCA Crim 123, [2007] 2 Cr App Rep (S) 280 (repetitive sexual offending with relatively low or no serious harm does not of itself indicate a significant risk of serious harm in the future); see also *R v Shaffi* [2006] EWCA Crim 418, [2006] 2 Cr App Rep 606). The court will be guided, but not bound by, the assessment of risk in pre-sentence reports; if the judge contemplates differing from the assessment, counsel should be given the opportunity of addressing the point: *R v Lang*; see also *R v Blacklock* [2006] EWCA Crim 1740, [2006] All ER (D) 361 (Jun). The court should guard against assuming that there is a significant risk of serious harm merely because the foreseen specified offence is serious: *R v Lang*. Where the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm can properly be regarded as significant, and it will usually be unreasonable to conclude that the assumption applies unless information as to the offences, pattern of behaviour, and offender shows a significant risk of serious harm from further offences: *R v Lang*. In relation to particularly young offenders, an indeterminate sentence may be inappropriate even where a serious offence has been committed and there is a significant risk of serious harm from further offences: *R v Lang*. Courts should usually give reasons for their conclusions: in particular, that there was or was not a significant risk of further offences or serious harm: *R v Lang*. Courts should, in giving reasons, identify the information which they have taken into account: *R v Lang*. See also *R v Pedley* [2009] EWCA Crim 840, [2009] Crim LR 669, [2009] All ER (D) 138 (May) (in addressing the question whether the risk of serious harm is significant the judge is entitled to balance the probability of harm against the nature of it if it occurs).

11 *R v Farrar* [2006] EWCA Crim 3261, [2007] 2 Cr App Rep (S) 202, [2007] Crim LR 308. See also *R v Johnson* [2006] EWCA Crim 2486 at [10], [2007] 1 All ER 1237 at [10], [2007] 1 WLR 585 at [10]; *A-G's Reference (No 134 of 2006) (Adam Bennett)* [2007] EWCA Crim 309, [2007] 2 Cr App Rep (S) 332; *R v Poynton* [2007] EWCA Crim 1805, [2007] All ER (D) 158 (Aug); *R v Lewis* [2007] EWCA Crim 2015, [2007] 1 Cr App Rep (S) 367, [2007] All ER (D) 40 (Sep).

12 *R v Considine*, *R v Davis* [2007] EWCA Crim 1166, [2007] 3 All ER 621, [2008] 1 Cr App Rep (S) 215.

UPDATE

69 Significant risk of serious harm

NOTE 7--See *R v Banaszek* [2010] EWCA Crim 1076, [2010] All ER (D) 158 (May).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS/(1) SERIOUS OFFENCES AND SERIOUS HARM/70. Specified violent offences.

70. Specified violent offences.

The offences which are specified for the purposes of the statutory provisions dealing with the sentencing of dangerous offenders¹ are divided into two categories, 'specified violent offences' and 'specified sexual offences'².

The specified violent offences are:

- 234 (1) manslaughter³;
- 235 (2) kidnapping⁴;
- 236 (3) false imprisonment⁵;
- 237 (4) soliciting murder⁶;
- 238 (5) threats to kill⁷;
- 239 (6) wounding with intent to cause grievous bodily harm⁸;
- 240 (7) malicious wounding⁹;
- 241 (8) attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence¹⁰;
- 242 (9) using chloroform, etc, to commit or assist in the committing of any indictable offence¹¹;
- 243 (10) maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm¹²;
- 244 (11) abandoning children¹³;
- 245 (12) causing bodily injury by explosives¹⁴;
- 246 (13) using explosives, etc, with intent to do grievous bodily harm¹⁵;
- 247 (14) placing explosives with intent to do bodily injury¹⁶;
- 248 (15) setting spring guns, etc, with intent to do grievous bodily harm¹⁷;
- 249 (16) endangering the safety of railway passengers¹⁸;
- 250 (17) injuring persons by furious driving¹⁹;
- 251 (18) assaulting an officer preserving a wreck²⁰;
- 252 (19) assault with intent to resist arrest²¹;
- 253 (20) assault occasioning actual bodily harm²²;
- 254 (21) causing an explosion likely to endanger life or property²³;
- 255 (22) attempting to cause explosion, or making or keeping explosives, with intent to endanger life or property²⁴;
- 256 (23) child destruction²⁵;
- 257 (24) cruelty to children²⁶;
- 258 (25) infanticide²⁷;
- 259 (26) possession of a firearm with intent to endanger life²⁸;
- 260 (27) possession of a firearm with intent to cause fear of violence²⁹;
- 261 (28) use of a firearm to resist arrest³⁰;
- 262 (29) possession of a firearm when committing or being arrested for a violent offence³¹;
- 263 (30) carrying a firearm with criminal intent³²;
- 264 (31) robbery or assault with intent to rob³³;
- 265 (32) burglary with intent to inflict grievous bodily harm on a person³⁴;
- 266 (33) burglary with intent to do unlawful damage to a building or anything in it³⁵;
- 267 (34) aggravated burglary³⁶;

- 268 (35) aggravated vehicle-taking³⁷ involving an accident which caused the death of any person³⁸;
- 269 (36) arson³⁹;
- 270 (37) destroying or damaging property⁴⁰ other than an offence of arson⁴¹;
- 271 (38) hostage-taking⁴²;
- 272 (39) hijacking of ships or aircraft⁴³;
- 273 (40) destroying, damaging or endangering the safety of aircraft⁴⁴;
- 274 (41) other acts endangering or likely to endanger the safety of aircraft⁴⁵;
- 275 (42) offences in relation to the carrying of certain dangerous articles on aircraft or in aviation installations⁴⁶;
- 276 (43) ill-treatment of mentally-disordered persons⁴⁷;
- 277 (44) female genital mutilation⁴⁸;
- 278 (45) riot⁴⁹;
- 279 (46) violent disorder⁵⁰;
- 280 (47) affray⁵¹;
- 281 (48) torture⁵²;
- 282 (49) causing death by dangerous driving⁵³;
- 283 (50) causing death by careless driving when under the influence of drink or drugs⁵⁴;
- 284 (51) endangering safety at aerodromes⁵⁵;
- 285 (52) seizing or exercising control of fixed platforms⁵⁶;
- 286 (53) destroying fixed platforms or endangering their safety⁵⁷;
- 287 (54) other acts endangering or likely to endanger safe navigation⁵⁸;
- 288 (55) offences involving threats to ships or fixed platforms⁵⁹;
- 289 (56) offences relating to Channel Tunnel trains and the tunnel system⁶⁰;
- 290 (57) putting people in fear of violence⁶¹;
- 291 (58) racially or religiously aggravated assaults⁶²;
- 292 (59) racially or religiously aggravated public order offences⁶³;
- 293 (60) genocide, crimes against humanity, war crimes and related offences⁶⁴, other than an offence involving murder⁶⁵;
- 294 (61) causing or allowing the death of a child or vulnerable adult⁶⁶;
- 295 (62) weapons training for the purposes of terrorism⁶⁷;
- 296 (63) directing a terrorist organisation⁶⁸;
- 297 (64) possession of an article for terrorist purposes⁶⁹;
- 298 (65) inciting terrorism overseas⁷⁰;
- 299 (66) use of nuclear weapons⁷¹;
- 300 (67) assisting or inducing certain weapons-related acts overseas⁷²;
- 301 (68) use of noxious substances or things to cause harm or intimidate⁷³;
- 302 (69) preparation of terrorist acts⁷⁴;
- 303 (70) training for terrorism⁷⁵;
- 304 (71) making or possession of radioactive device or material⁷⁶;
- 305 (72) use of radioactive device or material for terrorist purposes⁷⁷; and
- 306 (73) terrorist threats relating to radioactive devices⁷⁸.

An offence of aiding, abetting, counselling, procuring or inciting the commission of any of these offences is also a specified violent offence for these purposes⁷⁹, as is conspiring⁸⁰ or attempting⁸¹ to commit any such offence⁸² and an attempt or conspiracy to commit murder⁸³.

Provision is made for the assessment and management of the risks posed by persons who have been convicted and sentenced for, or (in certain circumstances) found to be not guilty and been made the subject of a hospital or guardianship order in consequence of, a specified violent offence, and other persons who, by reason of offences committed by them, are considered by the responsible authority to be persons who may cause serious harm to the public⁸⁴.

- 1 ie for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 5 (ss 224-236): see PARAS 73-77 (offenders generally), 80, 82-84, 87, 88 (young offenders).
- 2 Criminal Justice Act 2003 s 224(1), (2)(a), (3), Sch 15 Pt 1 (paras 1-65). For the specified sexual offences see PARA 71.
- 3 Criminal Justice Act 2003 Sch 15 para 1. As to the offence of manslaughter see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92.
- 4 Criminal Justice Act 2003 Sch 15 para 2. As to the offence of kidnapping see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 136.
- 5 Criminal Justice Act 2003 Sch 15 para 3. As to the offence of false imprisonment see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 135.
- 6 Criminal Justice Act 2003 Sch 15 para 4. As to the offence of soliciting murder (ie an offence under the Offences Against the Person Act 1861 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 104.
- 7 Criminal Justice Act 2003 Sch 15 para 5. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 16) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 105.
- 8 Criminal Justice Act 2003 Sch 15 para 6. As to the offence of wounding with intent to cause grievous bodily harm (ie an offence under the Offences Against the Person Act 1861 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118.
- 9 Criminal Justice Act 2003 Sch 15 para 7. As to the offence of malicious wounding (ie an offence under the Offences Against the Person Act 1861 s 20) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120.
- 10 Criminal Justice Act 2003 Sch 15 para 8. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 21) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 121.
- 11 Criminal Justice Act 2003 Sch 15 para 9. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 22) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 122.
- 12 Criminal Justice Act 2003 Sch 15 para 10. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 23) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124.
- 13 Criminal Justice Act 2003 Sch 15 para 11. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 27) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 143.
- 14 Criminal Justice Act 2003 Sch 15 para 12. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 28) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125.
- 15 Criminal Justice Act 2003 Sch 15 para 13. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 29) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126.
- 16 Criminal Justice Act 2003 Sch 15 para 14. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 30) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 130.
- 17 Criminal Justice Act 2003 Sch 15 para 15. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 31) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 131.
- 18 Criminal Justice Act 2003 Sch 15 para 16. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 32) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 132.
- 19 Criminal Justice Act 2003 Sch 15 para 17. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 35) see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1018.
- 20 Criminal Justice Act 2003 Sch 15 para 18. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 37) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1228.
- 21 Criminal Justice Act 2003 Sch 15 para 19. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 38) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 737.

22 Criminal Justice Act 2003 Sch 15 para 20. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 47) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 149.

23 Criminal Justice Act 2003 Sch 15 para 21. As to this offence (ie an offence under the Explosive Substances Act 1883 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127.

24 Criminal Justice Act 2003 Sch 15 para 22. As to this offence (ie an offence under the Explosive Substances Act 1883 s 3) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 128.

25 Criminal Justice Act 2003 Sch 15 para 23. As to this offence (ie an offence under the Infant Life (Preservation) Act 1929 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 108.

26 Criminal Justice Act 2003 Sch 15 para 24. As to this offence (ie an offence under the Children and Young Persons Act 1933 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 143; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 611.

27 Criminal Justice Act 2003 Sch 15 para 25. As to this offence (ie an offence under the Infanticide Act 1938 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 103.

28 Criminal Justice Act 2003 Sch 15 para 26. As to this offence (ie an offence under the Firearms Act 1968 s 16) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 674.

29 Criminal Justice Act 2003 Sch 15 para 27. As to this offence (ie an offence under the Firearms Act 1968 s 16A) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 675.

30 Criminal Justice Act 2003 Sch 15 para 28. As to this offence (ie an offence under the Firearms Act 1968 s 17(1)) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 676.

31 Criminal Justice Act 2003 Sch 15 para 29. As to this offence (ie an offence under the Firearms Act 1968 s 17(2), Sch 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 677.

32 Criminal Justice Act 2003 Sch 15 para 30. As to this offence (ie an offence under the Firearms Act 1968 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 679.

33 Criminal Justice Act 2003 Sch 15 para 31. As to this offence (ie an offence under the Theft Act 1968 s 8) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293.

34 Criminal Justice Act 2003 Sch 15 para 32(a). As to this offence (ie an offence under the Theft Act 1968 s 9) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294.

35 Criminal Justice Act 2003 Sch 15 para 32(b). As to this offence (ie an offence under the Theft Act 1968 s 9) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294.

36 Criminal Justice Act 2003 Sch 15 para 33. As to the offence of aggravated burglary (ie an offence under the Theft Act 1968 s 10) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 295.

37 As to the offence of aggravated vehicle-taking (ie an offence under the Theft Act 1968 s 12A) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 299.

38 Criminal Justice Act 2003 Sch 15 para 34.

39 Criminal Justice Act 2003 Sch 15 para 35. As to the offence of arson (ie an offence under the Criminal Damage Act 1971 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334.

40 Is an offence under the Criminal Damage Act 1971 s 1(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334).

41 Criminal Justice Act 2003 Sch 15 para 36.

42 Criminal Justice Act 2003 Sch 15 para 37. As to the offence of hostage-taking (ie an offence under the Taking of Hostages Act 1982 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 468.

43 Criminal Justice Act 2003 Sch 15 paras 38, 51. As to the offence of hijacking an aircraft (ie an offence under the Aviation Security Act 1982 s 1) see **AIR LAW** vol 2 (2008) PARA 624; and as to the offence of hijacking a ship (ie an offence under the Aviation and Maritime Security Act 1990 s 9) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1210.

- 44 Criminal Justice Act 2003 Sch 15 para 39. As to this offence (ie an offence under the Aviation Security Act 1982 s 2) see **AIR LAW** vol 2 (2008) PARA 628.
- 45 Criminal Justice Act 2003 Sch 15 para 40. As to this offence (ie an offence under the Aviation Security Act 1982 s 3) see **AIR LAW** vol 2 (2008) PARA 629.
- 46 Criminal Justice Act 2003 Sch 15 para 41. As to this offence (ie an offence under the Aviation Security Act 1982 s 4) see **AIR LAW** vol 2 (2008) PARA 630.
- 47 Criminal Justice Act 2003 Sch 15 para 42. As to this offence (ie an offence under the Mental Health Act 1983 s 127) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 767.
- 48 Criminal Justice Act 2003 Sch 15 paras 43, 61-63. As to offences involving female genital mutilation see the Female Genital Mutilation Act 2003 s 1 (female genital mutilation), s 2 (assisting a girl to mutilate her own genitalia) and s 3 (assisting a non-United Kingdom person to mutilate overseas a girl's genitalia); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 157-158. The Criminal Justice Act 2003 Sch 15 para 43 refers to this offence as being committed under the Prohibition of Female Circumcision Act 1985 s 1 (repealed), but the offence of female circumcision (or female genital mutilation) is now committed under the Female Genital Mutilation Act 2003 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 157 et seq).
- 49 Criminal Justice Act 2003 Sch 15 para 44. As to the offence of riot (ie an offence under the Public Order Act 1986 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 555.
- 50 Criminal Justice Act 2003 Sch 15 para 45. As to the offence of violent disorder (ie an offence under the Public Order Act 1986 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 556.
- 51 Criminal Justice Act 2003 Sch 15 para 46. As to the offence of affray (ie an offence under the Public Order Act 1986 s 3) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 557.
- 52 Criminal Justice Act 2003 Sch 15 para 47. As to the offence of torture (ie an offence under the Criminal Justice Act 1988 s 134) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 160.
- 53 Criminal Justice Act 2003 Sch 15 para 48. As to this offence (ie an offence under the Road Traffic Act 1988 s 1) see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 963.
- 54 Criminal Justice Act 2003 Sch 15 para 49. As to this offence (ie an offence under the Road Traffic Act 1988 s 3A) see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 974.
- 55 Criminal Justice Act 2003 Sch 15 para 50. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 1) see **AIR LAW** vol 2 (2008) PARA 631.
- 56 Criminal Justice Act 2003 Sch 15 para 52. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 10) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1211.
- 57 Criminal Justice Act 2003 Sch 15 para 53. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 11) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1212.
- 58 Criminal Justice Act 2003 Sch 15 para 54. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 12) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1213.
- 59 Criminal Justice Act 2003 Sch 15 para 55. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 13) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1214.
- 60 Criminal Justice Act 2003 Sch 15 para 56. The offences referred to in the text are offences under the Channel Tunnel (Security) Order 1994, SI 1994/570, Pt II.
- 61 Criminal Justice Act 2003 Sch 15 para 57. As to this offence (ie an offence under the Protection from Harassment Act 1997 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 153.
- 62 Criminal Justice Act 2003 Sch 15 para 58. As to this offence (ie an offence under the Crime and Disorder Act 1998 s 29) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 154.
- 63 Criminal Justice Act 2003 Sch 15 para 59. The offences referred to in the text are offences under the Public Order Act 1986 s 4 or s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 558-559) which fall within the Crime and Disorder Act 1998 s 31(1)(a) or (b) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 561); Criminal Justice Act 2003 Sch 15 para 59.

64 ie an offence under the International Criminal Court Act 2001 s 51 or s 52 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 454, 455).

65 Criminal Justice Act 2003 Sch 15 para 60.

66 Criminal Justice Act 2003 Sch 15 para 63A (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 65). As to this offence (ie an offence under the Domestic Violence, Crime and Victims Act 2004 s 5) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 107.

67 Criminal Justice Act 2003 Sch 15 para 59A (Sch 15 paras 59A-59D, 60A-60C, 63B-63F added by the Coroners and Justice Act 2009 s 138). As to this offence (ie an offence under the Terrorism Act 2000 s 54) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

68 Criminal Justice Act 2003 Sch 15 para 59B (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2000 s 56) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 441.

69 Criminal Justice Act 2003 Sch 15 para 59C (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2000 s 57) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 442.

70 Criminal Justice Act 2003 Sch 15 para 59D (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2000 s 59) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 469.

71 Criminal Justice Act 2003 Sch 15 para 60A (as added: see note 67). As to this offence (ie an offence under the Anti-terrorism, Crime and Security Act 2001 s 47) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 623.

72 Criminal Justice Act 2003 Sch 15 para 60B (as added: see note 67). As to this offence (ie an offence under the Anti-terrorism, Crime and Security Act 2001 s 50) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 629.

73 Criminal Justice Act 2003 Sch 15 para 60C (as added: see note 67). As to this offence (ie an offence under the Anti-terrorism, Crime and Security Act 2001 s 113) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 123.

74 Criminal Justice Act 2003 Sch 15 para 63B (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2006 s 5) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 443.

75 Criminal Justice Act 2003 Sch 15 para 63C (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2006 s 6) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

76 Criminal Justice Act 2003 Sch 15 para 63D (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2006 s 9) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 444.

77 Criminal Justice Act 2003 Sch 15 para 63E (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2006 s 10) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 445.

78 Criminal Justice Act 2003 Sch 15 para 63F (as added: see note 67). As to this offence (ie an offence under the Terrorism Act 2006 s 11) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 446.

79 Criminal Justice Act 2003 Sch 15 para 64(a).

80 Criminal Justice Act 2003 Sch 15 para 64(b).

81 Criminal Justice Act 2003 Sch 15 para 64(c).

82 This does not, however, include an attempt to incite the commission of an offence: see *R v Parnell* [2004] EWCA Crim 2523, [2005] 1 WLR 853, (2004) Times, 8 November, CA (case concerned with similar terminology in the Sex Offenders Act 1997 Sch 1 (repealed)).

83 Criminal Justice Act 2003 Sch 15 para 65.

84 See the Criminal Justice Act 2003 ss 325, 326, 327(1), (3), (4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS/(1) SERIOUS OFFENCES AND SERIOUS HARM/71. Specified sexual offences.

71. Specified sexual offences.

The specified sexual offences for the purposes of the statutory provisions dealing with the sentencing of dangerous offenders¹ are:

- 307 (1) rape²;
- 308 (2) assault by penetration³;
- 309 (3) sexual assault⁴;
- 310 (4) causing a person to engage in sexual activity without consent⁵;
- 311 (5) rape of a child aged under 13⁶;
- 312 (6) assault of a child aged under 13 by penetration⁷;
- 313 (7) sexual assault of a child aged under 13⁸;
- 314 (8) causing or inciting a child under 13 to engage in sexual activity⁹;
- 315 (9) sexual activity with a child¹⁰;
- 316 (10) causing or inciting a child to engage in sexual activity¹¹;
- 317 (11) engaging in sexual activity in the presence of a child¹²;
- 318 (12) causing a child to watch a sexual act¹³;
- 319 (13) child sex offences committed by children or young persons¹⁴;
- 320 (14) arranging or facilitating the commission of a child sex offence¹⁵;
- 321 (15) meeting a child following sexual grooming¹⁶;
- 322 (16) any of the child sex offences involving abuse of a position of trust¹⁷;
- 323 (17) any familial child sex offence¹⁸;
- 324 (18) any sexual offences against mentally disordered persons (including offences by care workers)¹⁹;
- 325 (19) paying for the sexual services of a child²⁰;
- 326 (20) causing or inciting child prostitution or pornography²¹;
- 327 (21) controlling a child prostitute or a child involved in pornography²²;
- 328 (22) arranging or facilitating child prostitution or pornography²³;
- 329 (23) causing or inciting prostitution for gain²⁴;
- 330 (24) controlling prostitution for gain²⁵;
- 331 (25) trafficking into, out of or within the United Kingdom for sexual exploitation²⁶;
- 332 (26) the offences of administering a substance, committing an offence or trespassing with intent to commit a sexual offence²⁷;
- 333 (27) sex with an adult relative²⁸;
- 334 (28) exposure²⁹;
- 335 (29) voyeurism³⁰;
- 336 (30) intercourse with an animal³¹;
- 337 (31) sexual penetration of a corpse³²;
- 338 (32) keeping a brothel³³;
- 339 (33) the offences relating to the taking, possession etc of indecent photographs of children³⁴; and
- 340 (34) certain customs offences relating to the prohibited importation of indecent or obscene articles³⁵.

Also specified for these purposes are a number of statutory offences which have been repealed³⁶, as well as the offences of aiding, abetting, counselling, procuring or inciting the

commission of any of the above offences (including those no longer having effect)³⁷, and the offences of conspiring³⁸ or attempting³⁹ to commit any such offence⁴⁰.

Provision is made for the assessment and management of the risks posed by persons who have been convicted and sentenced for, or (in certain circumstances) found to be not guilty and made the subject of a hospital or guardianship order in consequence of, a specified sexual offence, and other persons who, by reason of offences committed by them, are considered by the responsible authority to be persons who may cause serious harm to the public⁴¹.

1 le for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 5 (ss 224-236) (see PARAS 73-77 (offenders generally), 80, 82-84, 87, 88 (young offenders)): see the Criminal Justice Act 2003 s 224(1), (2)(a), (3), Sch 15 Pt 2 (paras 66-153). For the specified violent offences see PARA 70.

2 Criminal Justice Act 2003 Sch 15 paras 66, 102. As to the offence of rape see the Sexual Offences Act 2003 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 165. The offence was formerly committed under the Sexual Offences Act 1956 s 1 (repealed) (see note 36).

3 Criminal Justice Act 2003 Sch 15 para 103. As to this offence (ie an offence under the Sexual Offences Act 2003 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 167.

4 Criminal Justice Act 2003 Sch 15 para 104. As to this offence (ie an offence under the Sexual Offences Act 2003 s 3) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 169.

5 Criminal Justice Act 2003 Sch 15 para 105. As to this offence (ie an offence under the Sexual Offences Act 2003 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 171.

6 Criminal Justice Act 2003 Sch 15 para 106. As to this offence (ie an offence under the Sexual Offences Act 2003 s 5) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 166.

7 Criminal Justice Act 2003 Sch 15 para 107. As to this offence (ie an offence under the Sexual Offences Act 2003 s 6) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 168.

8 Criminal Justice Act 2003 Sch 15 para 108. As to this offence (ie an offence under the Sexual Offences Act 2003 s 7) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 170.

9 Criminal Justice Act 2003 Sch 15 para 109. As to this offence (ie an offence under the Sexual Offences Act 2003 s 8) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 172.

10 Criminal Justice Act 2003 Sch 15 para 110. As to this offence (ie an offence under the Sexual Offences Act 2003 s 9) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 173.

11 Criminal Justice Act 2003 Sch 15 para 111. As to this offence (ie an offence under the Sexual Offences Act 2003 s 10) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 174.

12 Criminal Justice Act 2003 Sch 15 para 112. As to this offence (ie an offence under the Sexual Offences Act 2003 s 11) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 175.

13 Criminal Justice Act 2003 Sch 15 para 113. As to this offence (ie an offence under the Sexual Offences Act 2003 s 12) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 176.

14 Criminal Justice Act 2003 Sch 15 para 114. As to this offence (ie an offence under the Sexual Offences Act 2003 s 13) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 177.

15 Criminal Justice Act 2003 Sch 15 para 115. As to this offence (ie an offence under the Sexual Offences Act 2003 s 14) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 178.

16 Criminal Justice Act 2003 Sch 15 para 116. As to this offence (ie an offence under the Sexual Offences Act 2003 s 15) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 179.

17 Criminal Justice Act 2003 Sch 15 paras 117-120. As to these offences (ie offences under the Sexual Offences Act 2003 ss 16-19) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 180-187.

18 Criminal Justice Act 2003 Sch 15 paras 121, 122. As to these offences (ie offences under the Sexual Offences Act 2003 ss 25, 26) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 191, 193, 195.

- 19 Criminal Justice Act 2003 Sch 15 paras 123-134. As to these offences (ie offences under the Sexual Offences Act 2003 ss 30-41) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 196-214.
- 20 Criminal Justice Act 2003 Sch 15 para 135. As to this offence (ie an offence under the Sexual Offences Act 2003 s 47) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 215.
- 21 Criminal Justice Act 2003 Sch 15 para 136. As to this offence (ie an offence under the Sexual Offences Act 2003 s 48) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216.
- 22 Criminal Justice Act 2003 Sch 15 para 137. As to this offence (ie an offence under the Sexual Offences Act 2003 s 49) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216.
- 23 Criminal Justice Act 2003 Sch 15 para 138. As to this offence (ie an offence under the Sexual Offences Act 2003 s 50) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216.
- 24 Criminal Justice Act 2003 Sch 15 para 139. As to this offence (ie an offence under the Sexual Offences Act 2003 s 52) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217.
- 25 Criminal Justice Act 2003 Sch 15 para 140. As to this offence (ie an offence under the Sexual Offences Act 2003 s 53) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217.
- 26 Criminal Justice Act 2003 Sch 15 paras 141-143. As to these offences (ie an offence under the Sexual Offences Act 2003 s 57, s 58 or s 59) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 228. As to the meaning of 'United Kingdom' see PARA 9 note 2.
- 27 Criminal Justice Act 2003 Sch 15 paras 144-146. As to these offences (ie an offence under the Sexual Offences Act 2003 ss 61-63) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 230-232.
- 28 Criminal Justice Act 2003 Sch 15 paras 147, 148. As to these offences (ie an offence under the Sexual Offences Act 2003 ss 64, 65) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 188-190.
- 29 Criminal Justice Act 2003 Sch 15 para 149. As to this offence (ie an offence under the Sexual Offences Act 2003 s 66) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 233.
- 30 Criminal Justice Act 2003 Sch 15 para 150. As to this offence (ie an offence under the Sexual Offences Act 2003 s 67) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 234.
- 31 Criminal Justice Act 2003 Sch 15 para 151. As to this offence (ie an offence under the Sexual Offences Act 2003 s 69) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 235.
- 32 Criminal Justice Act 2003 Sch 15 para 152. As to this offence (ie an offence under the Sexual Offences Act 2003 s 70) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 236.
- 33 Criminal Justice Act 2003 Sch 15 para 92. As to this offence (ie an offence under the Sexual Offences Act 1956 s 33) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 218.
- 34 Criminal Justice Act 2003 Sch 15 paras 99, 101. As to these offences (ie offences under the Protection of Children Act 1978 s 1 and the Criminal Justice Act 1988 s 160) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 757, 758.
- 35 Criminal Justice Act 2003 Sch 15 para 100. As to these offences (ie offences under the Customs and Excise Management Act 1979 s 170 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under the Customs Consolidation Act 1876 s 42 (indecent or obscene articles) (repealed), if the prohibited goods included indecent photographs of persons under 16) see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178.
- 36 Ie, in addition to the offence of rape under the Sexual Offences Act 1956 s 1 (repealed) (see the text and note 2), the offences of procurement of a woman by threats (see s 2 (repealed)) or false pretences (see s 3 (repealed)), administering drugs to obtain or facilitate intercourse (see s 4 (repealed)), intercourse with a girl aged under 13 (see s 5 (repealed)) or, where the offender is aged 20 or over, under 16 (see s 6 (repealed)), intercourse with or procurement of a defective (see ss 7, 9 (repealed)), incest by a man (see s 10 (repealed)) or a woman (see s 11 (repealed)), indecent assault on a woman or man (see ss 14, 15 (both repealed)), assault with intent to commit buggery (if the victim or (as the case may be) other party was under 18) (see s 16 (repealed)), abduction of a woman by force or for the sake of her property (see s 17 (repealed)), abduction of

an unmarried girl from her parent or guardian (see ss 18-20 (repealed)), abduction of a defective from his parent or guardian (see s 21 (repealed)), causing prostitution of women (see s 22 (repealed)), procuration of a girl aged under 21 (see s 23 (repealed)), detention of women in a brothel (see s 24 (repealed)), permitting a girl under 16 to use premises for intercourse (see ss 25, 26 (repealed)), permitting a defective to use premises for intercourse (see s 27 (repealed)), causing or encouraging the prostitution of, intercourse with or indecent assault on a girl under 16 (see s 28 (repealed)), causing or encouraging the prostitution of a defective (see s 29 (repealed)), soliciting by men (see s 32 (repealed)), sexual intercourse with mental patients (see the Mental Health Act 1959 (repealed)), indecent conduct towards a young child (see the Indecency with Children Act 1960 s 1 (repealed)), procuring others to commit homosexual acts (see the Sexual Offences Act 1967 s 4 (repealed)), living on the earnings of male prostitution (see s 5 (repealed)), burglary with intent to commit rape (see the Theft Act 1968 s 9 (no longer in effect with regard to this offence)), and inciting a girl under 16 to have incestuous sexual intercourse (see the Criminal Law Act 1977 s 54 (repealed)): see the Criminal Justice Act 2003 Sch 15 paras 66-91, 93-98.

37 Criminal Justice Act 2003 Sch 15 para 153(a).

38 Criminal Justice Act 2003 Sch 15 para 153(b).

39 Criminal Justice Act 2003 Sch 15 para 153(c).

40 This does not, however, include an attempt to incite the commission of an offence: see *R v Parnell* [2004] EWCA Crim 2523, [2005] 1 WLR 853, (2004) Times, 8 November (case concerned with similar terminology in the Sex Offenders Act 1997 Sch 1 (repealed)).

41 See the Criminal Justice Act 2003 ss 325, 326, 327(1), (3), (4).

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72. Offences a previous conviction for which qualify an offender for imprisonment or detention for public protection or an extended sentence.

An offender who is convicted of a serious offence¹ may be sentenced to imprisonment or detention for public protection or an extended sentence² if³ he had been previously convicted of any of the following offences:

- 341 (1) murder⁴;
- 342 (2) manslaughter⁵;
- 343 (3) soliciting murder⁶;
- 344 (4) wounding with intent to cause grievous bodily harm⁷;
- 345 (5) rape⁸;
- 346 (6) assault by penetration⁹;
- 347 (7) causing a person to engage in sexual activity without consent¹⁰;
- 348 (8) intercourse with a girl aged under 13¹¹;
- 349 (9) rape of a child aged under 13¹²;
- 350 (10) assault of a child aged under 13 by penetration¹³;
- 351 (11) causing or inciting a child under 13 to engage in sexual activity¹⁴;
- 352 (12) sexual activity with a person with a mental disorder impeding choice¹⁵;
- 353 (13) causing or inciting a person with a mental disorder to engage in sexual activity¹⁶;
- 354 (14) inducement, threat or deception to procure sexual activity with a person with a mental disorder¹⁷;
- 355 (15) causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement¹⁸;
- 356 (16) paying for the sexual services of a child¹⁹;
- 357 (17) committing an offence with intent to commit a sexual offence²⁰;
- 358 (18) possession of a firearm with intent to endanger life²¹;
- 359 (19) use of a firearm to resist arrest²²;
- 360 (20) carrying a firearm with criminal intent²³;
- 361 (21) robbery with a firearm or assault with intent to rob²⁴; and
- 362 (22) corresponding Scottish or Northern Irish offences and offences under service law²⁵.

An offence of aiding, abetting, counselling, procuring or inciting the commission of any of these offences is also a specified offence for these purposes²⁶, as is conspiring²⁷ or attempting²⁸ to commit any such offence and an offence of encouraging or assisting the commission of an offence²⁹ in relation to which such an offence is the offence (or one of the offences) which the person intended or believed would be committed³⁰.

¹ As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

² See the Criminal Justice Act 2003 ss 225, 227; and PARAS 74, 75, 87, 88.

³ Ie for the purposes of the Criminal Justice Act 2003 ss 225(3A), 227(2A) (see PARAS 74, 75, 87, 88), by virtue of Sch 15A Pt 1 (Sch 15A added by the Criminal Justice and Immigration Act 2008 Sch 5).

4 Criminal Justice Act 2003 Sch 15A para 1 (as added: see note 3). As to the offence of murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 89-91.

5 Criminal Justice Act 2003 Sch 15A para 2 (as added: see note 3). As to the offence of manslaughter see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92.

6 Criminal Justice Act 2003 Sch 15A para 3 (as added: see note 3). As to the offence of soliciting murder (ie an offence under the Offences Against the Person Act 1861 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 104.

7 Criminal Justice Act 2003 Sch 15A para 4 (as added: see note 3). As to the offence of wounding with intent to cause grievous bodily harm (ie an offence under the Offences Against the Person Act 1861 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118.

8 Criminal Justice Act 2003 Sch 15A paras 5, 11 (as added: see note 3). As to the offence of rape see the Sexual Offences Act 2003 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 165. The offence was formerly committed under the Sexual Offences Act 1956 s 1 (repealed).

9 Criminal Justice Act 2003 Sch 15A para 12 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 167.

10 Criminal Justice Act 2003 Sch 15A para 13 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 171.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A paras 13, 53 (as so added).

11 Criminal Justice Act 2003 Sch 15A para 6 (as added: see note 3). This offence was committed under the Sexual Offences Act 1956 s 5 (repealed).

12 Criminal Justice Act 2003 Sch 15A para 14 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 5) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 166.

13 Criminal Justice Act 2003 Sch 15A para 15 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 6) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 168.

14 Criminal Justice Act 2003 Sch 15A para 16 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 8) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 172.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 16 (as so added).

15 Criminal Justice Act 2003 Sch 15A para 17 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 30) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 197.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 17 (as so added).

16 Criminal Justice Act 2003 Sch 15A para 18 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 31) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 198.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 18 (as so added).

17 Criminal Justice Act 2003 Sch 15A para 19 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 34) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 202.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 19 (as so added).

18 Criminal Justice Act 2003 Sch 15A para 20 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 35) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 203.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 20 (as so added).

19 Criminal Justice Act 2003 Sch 15A para 21 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 47) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 215.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 21 (as so added).

20 Criminal Justice Act 2003 Sch 15A para 22 (as added: see note 3). As to this offence (ie an offence under the Sexual Offences Act 2003 s 62) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 231.

A conviction for this offence is only applicable for these purposes if the offender was liable on conviction on indictment to imprisonment, custody or detention for life: Criminal Justice Act 2003 Sch 15A para 22 (as so added).

21 Criminal Justice Act 2003 Sch 15A para 7 (as added: see note 3). As to this offence (ie an offence under the Firearms Act 1968 s 16) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 674.

22 Criminal Justice Act 2003 Sch 15A para 8 (as added: see note 3). As to this offence (ie an offence under the Firearms Act 1968 s 17(1)) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 676.

23 Criminal Justice Act 2003 Sch 15A para 9 (as added: see note 3). As to this offence (ie an offence under the Firearms Act 1968 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 679.

24 Criminal Justice Act 2003 Sch 15A para 10 (as added: see note 3). As to this offence (ie an offence under the Theft Act 1968 s 8) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293.

A conviction for this offence is only applicable for these purposes if at some time during the commission of the offence the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 630, 631): Criminal Justice Act 2003 Sch 15A para 10 (as so added).

As to the use of a firearm in the commission of a second serious offence see further *R v Buckland* [2000] 1 All ER 907, [2000] 1 Cr App Rep 471, [2000] 1 WLR 1262; *R v Benfield* [2003] EWCA Crim 2223, [2004] 1 Cr App Rep (S) 307, [2003] Crim LR 811 (explained in *R v Hylands* [2004] EWCA Crim 2999, [2005] 2 Cr App Rep (S) 135, [2005] Crim LR 154).

25 See the Criminal Justice Act 2003 Sch 15A Pts 2-4 (paras 24-52) (as added: see note 3).

26 Criminal Justice Act 2003 Sch 15A para 23(3), (5) (as added: see note 3).

27 Criminal Justice Act 2003 Sch 15A para 23(2) (as added: see note 3).

28 Criminal Justice Act 2003 Sch 15A para 23(1) (as added: see note 3).

29 Ie an offence under the Serious Crime Act 2007 Pt 2 (ss 44-67) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

30 Criminal Justice Act 2003 Sch 15A para 23(4) (as added: see note 3).

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(2) SENTENCES FOR PUBLIC PROTECTION AND EXTENDED SENTENCES

73. Life sentence for serious offences where there is a significant risk of serious harm.

Where:

363 (1) a person aged 18 or over¹ is convicted of a serious offence² committed on or after 4 April 2005³; and

364 (2) the court⁴ is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further serious offences⁵,

the court may⁶ impose a sentence⁷ of imprisonment for life or⁸, in the case of a person aged at least 18 but under 21, a sentence of custody for life if:

365 (a) the offence is one in respect of which the offender would otherwise⁹ be liable to imprisonment for life¹⁰; and

366 (b) the court considers that the seriousness¹¹ of the offence, or of the offence and one or more offences associated¹² with it, is such as to justify the imposition of a sentence of imprisonment for life¹³.

Where these condition are not met the court may impose a sentence of imprisonment for public protection¹⁴.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where a dangerous offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 226; and PARA 82.

2 As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 Criminal Justice Act 2003 s 225(1)(a). 4 April 2005 is the date on which ss 225-228 were brought into force: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 18. For provisions relating to offences committed before this date see PARAS 76-77. As to offences committed over a period of two or more days either side of this date see *R v Harries* [2007] EWCA Crim 1622, [2008] 1 Cr App Rep (S) 255, [2007] Crim LR 820; as to offences committed prior to that date see *R v Pressdee* [2007] EWCA Crim 1289, [2008] 1 Cr App Rep (S) 120, [2007] All ER (D) 157 (May).

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 225(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 For guidance on the exercise of the court's discretion see *A-G's Reference (No 55 of 2008)*; *R v C* [2008] EWCA Crim 2790, [2009] 2 All ER 867, [2009] 2 Cr App Rep (S) 142, [2009] 1 WLR 2158; *A-G's Reference (No 43 of 2009)*; *R v Wilkinson* [2009] EWCA Crim 1925, (2009) Times, 9 October, [2009] All ER (D) 49 (Oct).

7 An offence the sentence for which is imposed under the Criminal Justice Act 2003 s 225 is not to be regarded as an offence the sentence for which is fixed by law: s 225(5).

8 le until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005, SI 2005/643, art 3(4)(a).

9 le apart from the Criminal Justice Act 2003 s 225: see the text and notes 1-8, 10-13; and PARA 74.

10 Criminal Justice Act 2003 s 225(2)(a). In the course of an inquiry pursuant to s 225(2)(a) it is not appropriate to consider whether, applying particular guidelines, a sentence of life imprisonment would in fact have been imposed, but rather the question was whether the defendant was liable to such a sentence: see *R v Beazley* [2006] EWCA Crim 3376, [2006] All ER (D) 175 (Oct); *R v Wood* [2009] EWCA Crim 651, [2009] Crim LR 543, [2009] All ER (D) 49 (Apr). Where the criteria of dangerousness is satisfied, a life sentence should be imposed only for particularly serious offences: *R v Kehoe* [2008] EWCA Crim 819, [2009] 1 Cr App Rep (S) 41, [2008] All ER (D) 423 (Apr); *R v P* [2008] EWCA Crim 1228, [2008] All ER (D) 119 (Sep).

11 See PARA 618 et seq.

12 As to an 'associated offence' see PARA 19 note 9.

13 Criminal Justice Act 2003 s 225(2)(b). As to where the court might consider that the seriousness of the offence justifies a sentence of imprisonment or detention for life or (as an alternative) imprisonment or detention for public protection (see PARA 74) see *R v Terrell* [2007] EWCA Crim 3079, [2008] 2 All ER 1065, [2008] 2 Cr App Rep (S) 292 (indecent photographs of children); *R v Hicks* [2009] EWCA Crim 733, [2009] All ER (D) 141 (Apr) (same); *A-G's Reference (No 112 of 2006) (Glover)* [2006] EWCA Crim 3385, [2007] 2 Cr App Rep (S) 248 (serious case of wounding with intent).

14 See PARA 74.

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74. Imprisonment for public protection for serious offences.

Where:

- 367 (1) a person aged 18 or over¹ is convicted of a serious offence² committed on or after 4 April 2005³; and
- 368 (2) the court⁴ is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further serious offences⁵,

but:

- 369 (a) the offence is not one in respect of which the offender would otherwise⁶ be liable to imprisonment for life⁷; and
- 370 (b) the court does not consider that the seriousness⁸ of the offence, or of the offence and one or more offences associated⁹ with it, is such as to justify the imposition of a sentence of imprisonment for life¹⁰,

the court may¹¹ impose a sentence¹² of imprisonment for public protection or¹³, in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution¹⁴ for public protection if either:

- 371 (i) at the time the offence was committed, the offender had been convicted of a specified violent or sexual offence¹⁵; or
- 372 (ii) the notional minimum term¹⁶ is at least two years¹⁷.

A sentence of imprisonment for public protection and a sentence of detention in a young offender institution for public protection is a sentence of imprisonment or detention for an indeterminate period which is subject to specified provisions¹⁸ as to the release of prisoners and duration of licences¹⁹.

For all practical purposes, imprisonment and detention for public protection are the same as a life sentence²⁰.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where a dangerous offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 226; and PARA 82.

2 As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 See the Criminal Justice Act 2003 s 225(1)(a); and PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 225(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 Ie apart from the Criminal Justice Act 2003 s 225: see PARA 73.

7 See the Criminal Justice Act 2003 s 225(2)(a); and PARA 73 note 10.

8 See PARA 618 et seq.

9 As to an 'associated offence' see PARA 19 note 9.

10 See the Criminal Justice Act 2003 s 225(2)(b); and PARA 73 note 13. As to where a sentence for public protection should be imposed instead of an extended sentence see *A-G's Reference (No 54 of 2007)*; *R v Gower* [2007] EWCA Crim 1655, [2008] 1 Cr App Rep (S) 358, [2007] All ER (D) 145 (Sep).

11 For guidance on the exercise of the court's discretion see *A-G's Reference (No 55 of 2008)*; *R v C* [2008] EWCA Crim 2790, [2009] 2 All ER 867, [2009] 1 WLR 2158; *A-G's Reference (No 43 of 2009)*; *R v Wilkinson* [2009] EWCA Crim 1925, (2009) Times, 9 October, [2009] All ER (D) 49 (Oct).

12 An offence the sentence for which is imposed under the Criminal Justice Act 2003 s 225 is not to be regarded as an offence the sentence for which is fixed by law: s 225(5).

Where a sentence has been imposed on any person under s 225(3), the condition in s 225(3A) (see the text and note 15) was met but the condition in s 225(3B) (see the text and note 17) was not, and any previous conviction of his without which the condition in s 225(3A) would not have been met has been subsequently set aside on appeal, then notwithstanding anything in the Criminal Appeal Act 1968 s 18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1863), notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside: Criminal Justice Act 2003 s 231 (substituted by the Criminal Justice and Immigration Act 2008 s 18(1)).

13 Ie until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587, art 2(1), (2).

14 See PARA 86.

15 Criminal Justice Act 2003 s 225(3), (3A) (s 225(3) substituted, s 225(3A)-(3C) added, by the Criminal Justice and Immigration Act 2008 s 13(1)). As to the violent and sexual offences specified for these purposes see the Criminal Justice Act 2003 Sch 15A; and PARA 72. Where on any date after 14 July 2008 (ie the date on which Sch 15A was brought into force by the Criminal Justice and Immigration Act 2008 (Commencement No 2 and Transitional and Saving Provisions) Order 2008, SI 2008/1586) a person is convicted in England and Wales of an offence specified in that Schedule, the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and that court subsequently certifies that fact, that certificate is evidence for the purposes of the Criminal Justice Act 2003 225(3A) that he was convicted of such an offence on that date: s 232 (amended by the Criminal Justice and Immigration Act 2008 s 18(2)). As to the meaning of 'open court' see PARA 23 note 3.

16 The 'notional minimum term' is the part of the sentence that the court would specify under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) (determination of tariff: see PARA 33) if it imposed a sentence of imprisonment for public protection (or, until a day to be appointed, in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for public protection) but was required to disregard the matter mentioned in s 82A(3)(b) (crediting periods of remand): Criminal Justice Act 2003 s 225(3C) (as added: see note 15); Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587, art 2(1), (2).

17 Criminal Justice Act 2003 s 225(3B) (as added: see note 15).

18 Ie the Crime (Sentences) Act 1997 Pt 2 Ch 2 (ss 28-34) (see **PRISONS** vol 36(2) (Reissue) PARAS 621-627).

19 Criminal Justice Act 2003 s 225(4) (amended by SI 2005/643). For a consideration of the statutory regime for dealing with indeterminate sentences under the Criminal Justice Act 2003 s 225 see *R (on the application of James) v Secretary of State for Justice* [2009] UKHL 22 at [87]-[135], [2009] 4 All ER 255 at [87]-[135], [2009] All ER (D) 43 (May), at [87]-[135], per Lord Judge.

20 *R v Lang* [2005] EWCA Crim 2864, [2006] 2 All ER 410, [2006] 1 WLR 2509. Life sentences and imprisonment and detention for public protection are both sentences for an indeterminate period and are both subject to the provisions of the Crime (Sentences) Act 1997 Pt 2 Ch 2 as to the release of prisoners and duration of licences: moreover, in relation to both types of sentence the court must fix a minimum term to be served in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 82A: *R v Lang*. The only discernible differences between a life sentence and imprisonment or detention for public protection are that in the case of a sentence of imprisonment or detention for public protection, the Parole Board may, on application ten years after release, direct the Secretary of State to order that a licence cease to have effect (see **PRISONS**); and that in relation to such a sentence no order can be made under s 82A(4) that early release provisions do not apply (see s 82A(4A); and PARA 33): *R v Lang*. The imposition of consecutive indeterminate sentences, or of an

indeterminate sentence consecutive to another period of imprisonment, is undesirable: *R v O'Brien*, *R v Moss*, *R v Llewellyn* [2006] EWCA Crim 1741, [2006] 4 All ER 1012, [2007] 1 Cr App Rep (S) 442; applied in *R v Perry* [2007] EWCA Crim 1783, [2007] All ER (D) 12 (Sep). See also *R v Ashes* [2007] EWCA Crim 1848, [2008] 1 All ER 113, [2008] 1 Cr App Rep (S) 507. Where offenders are to be sentenced for several offences, only some of which are specified, a court which imposes an indeterminate sentence under the Criminal Justice Act 2003 s 225 for the principal offences should generally impose a shorter concurrent term for the other offences: *R v Lang*.

UPDATE

74 Imprisonment for public protection for serious offences

NOTES 11-13--Guidance has been given in relation to the minimum term that can be imposed when sentences of imprisonment for public protection are passed under the Criminal Justice Act 2003: *R v Delucca*; *R v Murray*; *R v Stubbings* [2010] EWCA Crim 710, [2010] All ER (D) 293 (Mar).

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75. Extended sentence for certain violent or sexual offences.

Where:

- 373 (1) a person aged 18 or over¹ is convicted of a specified violent or sexual offence² committed on or after 4 April 2005³; and
- 374 (2) the court⁴ considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences⁵; but
- 375 (3) the court is not required⁶ to impose a sentence of imprisonment for life or, in the case of a person aged at least 18 but under 21, custody for life⁷,

the court may impose on the offender an extended sentence of imprisonment or, until a day to be appointed⁸, in the case of a person aged at least 18 but under 21, an extended sentence of detention in a young offender institution⁹ if either:

- 376 (a) at the time the offence was committed, the offender had been convicted of a specified violent or sexual offence¹⁰; or
- 377 (b) if the court were to impose an extended sentence of imprisonment or detention in a young offender institution the term that it would specify as the appropriate custodial term¹¹ would be at least four years¹².

An extended sentence of imprisonment or detention in a young offender institution is a sentence of imprisonment or detention the term of which is equal to the aggregate of the appropriate custodial term and a further period (the 'extension period') for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences¹³. The term of an extended sentence (ie the aggregate of the custodial term and the extension period) must not exceed the maximum term permitted for the offence¹⁴ and the extension period must not exceed five years (in the case of a specified violent offence) or eight years (in the case of a specified sexual offence)¹⁵.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where an offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 228; and PARA 84.

2 As to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 Criminal Justice Act 2003 s 227(1)(a) (s 227(1)(a), (c), (2), (3) amended, s 227(2A)-(2C), (6) added, by the Criminal Justice and Immigration Act 2008 s 15, Sch 28 Pt 2; Criminal Justice Act 2003 s 227(1)(c), (2), (2B), (2C), (3), (5) amended until the date on which the Criminal Justice and Court Services Act 2000 s 61 comes into force by SI 2005/643; SI 2008/1587). As to 4 April 2005 see PARA 73 note 3. In connection with offences committed before 4 April 2005 see PARA 76.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 227(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 Ie by the Criminal Justice Act 2003 s 225(2): see PARA 73.

7 Criminal Justice Act 2003 s 227(1)(c) (as amended: see note 3).

8 Ie until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587, art 2(1), (2).

9 Criminal Justice Act 2003 s 227(2) (as amended: see note 3). As to detention in a young offender institution see PARA 85. Where a sentence has been imposed on any person under the Criminal Justice Act 2003 s 227(2), the condition in s 227(2A) (see the text and note 10) was met but the condition in s 227(2B) (see the text and notes 11-12) was not, and any previous conviction of his without which the condition in s 227(2A) would not have been met has been subsequently set aside on appeal, then notwithstanding anything in the Criminal Appeal Act 1968 s 18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1863), notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside: Criminal Justice Act 2003 s 231 (substituted by the Criminal Justice and Immigration Act 2008 s 18(1)).

10 Criminal Justice Act 2003 s 227(2A) (as added: see note 3). As to the violent and sexual offences specified for these purposes see Sch 15A; and PARA 72. Where on any date after 14 July 2008 (ie the date on which Sch 15A was brought into force by the Criminal Justice and Immigration Act 2008 (Commencement No 2 and Transitional and Saving Provisions) Order 2008, SI 2008/1586) a person is convicted in England and Wales of an offence specified in that Schedule, the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and that court subsequently certifies that fact, that certificate is evidence for the purposes of the Criminal Justice Act 2003 227(2A) that he was convicted of such an offence on that date: s 232 (amended by the Criminal Justice and Immigration Act 2008 s 18(2)). As to the meaning of 'open court' see PARA 23 note 3.

11 For these purposes 'appropriate custodial term' means a term of imprisonment or detention in a young offender institution (not exceeding the maximum term permitted for the offence) which is the term that would (apart from the Criminal Justice Act 2003 s 227) be imposed in compliance with s 153(2) (see PARA 32) or, where the term that would be so imposed is a term of less than 12 months, is a term of 12 months: s 227(3) (as amended: see note 3).

12 Criminal Justice Act 2003 s 227(2B) (as added and amended: see note 3). The Secretary of State may by order amend s 227(2B) so as to substitute a different period for the period for the time being specified: s 227(6) (as so added). At the date at which this volume states the law no such orders had been made.

13 Criminal Justice Act 2003 s 227(2C) (as added and amended: see note 3). The Court of Appeal has tentatively concluded that the extension period under s 227 begins to run at the end of the custodial period, whether or not part of the custodial period is 'served' on licence: *R v S* [2005] EWCA Crim 3616, 170 JP 145, [2006] 2 Cr App Rep (S) 224.

14 Criminal Justice Act 2003 s 227(5) (as amended: see note 3).

15 Criminal Justice Act 2003 s 227(4).

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76. Extended sentence for violent or sexual offences committed before 4 April 2005.

Where a court¹ proposes to impose a custodial sentence² for a sexual or violent offence committed between 30 September 1998³ and 4 April 2005⁴ and considers that the period (if any) for which the offender would⁵ be subject to a licence⁶ would not be adequate for the purpose of preventing the commission by him of further offences and securing his rehabilitation, the court may pass on the offender an extended sentence⁷. An extended sentence for these purposes is a custodial sentence the term of which is equal to the aggregate of:

- 378 (1) the term of the custodial sentence that the court would have imposed if it had otherwise⁸ passed a custodial sentence⁹; and
- 379 (2) a further period for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of preventing the commission by him of further offences and securing his rehabilitation¹⁰,

although the term of an extended sentence passed in respect of an offence may not exceed the maximum term permitted for that offence¹¹.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the meaning of 'custodial sentence' see PARA 20 note 2.

3 I.e. the date on which the Crime and Disorder Act 1998 s 58 (repealed, and replaced by the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (see the text and notes 4-11)) was brought into force by the Crime and Disorder Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2327 (amended by SI 1998/2412; SI 1998/2906; SI 2000/924).

4 The Powers of Criminal Courts (Sentencing) Act 2000 s 85 (see the text and notes 5-11) was repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). In connection with offences committed after 4 April 2005 see PARA 75.

5 I.e. apart from the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (see the text and notes 6-11).

6 I.e. a licence under the Criminal Justice Act 1991 Pt II (ss 32-51) (early release of prisoners: see **PRISONS** vol 36(2) (Reissue) PARAS 618-627); Powers of Criminal Courts (Sentencing) Act 2000 s 85(8) (repealed with savings: see note 4).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 85(1), (2) (repealed with savings: see note 4).

8 I.e. otherwise than under the Powers of Criminal Courts (Sentencing) Act 2000 s 85.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 85(2)(a) (repealed with savings: see note 4). This is referred to as the 'custodial term'. Where the offence is a violent offence, the court may not pass an extended sentence the custodial term of which is less than four years: s 85(3) (as so repealed with savings). In this regard see further PARA 34.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 85(2)(b) (repealed with savings: see note 4). This is referred to as the 'extension period', and may not exceed ten years in the case of a sexual offence (s 85(4)(a) (as so repealed with savings)) and five years in the case of a violent offence (s 85(4)(b) (as so repealed with savings)). The Secretary of State may by order amend s 85(4)(b) by substituting a different period, not

exceeding ten years, for the period for the time being specified therein: s 85(7) (as so repealed with savings).
At the date at which this volume states the law no such order had been made.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 85(5) (repealed with savings: see note 4).

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77. Life sentence for second serious offence committed before 4 April 2005.

Where a person is convicted of a serious offence¹ committed between 1 October 1997² and 4 April 2005³ and at the time when that offence was committed, he was 18 or over and had been convicted in any part of the United Kingdom of another serious offence, the court⁴ must impose a life sentence⁵ unless it is of the opinion that there are exceptional circumstances relating to either of the offences or to the offender which justify its not doing so⁶. Where the court does not impose a life sentence, it must state in open court⁷ that it is of that opinion and what the exceptional circumstances are⁸.

1 By virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 109(5) (amended by the Sexual Offences Act 2003 Sch 6 para 43(1), (3); repealed with savings (see note 3)), an offence committed in England and Wales is a serious offence for these purposes if it is any of:

- 45 (1) an attempt to commit murder, an incitement to murder or a conspiracy to commit murder (as to murder, incitement and conspiracy see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 89 et seq, 65, 66 et seq);
- 46 (2) an offence under the Offences Against the Person Act 1861 s 4 (soliciting murder: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 104);
- 47 (3) manslaughter (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92 et seq);
- 48 (4) an offence under the Offences Against the Person Act 1861 s 18 (wounding, or causing grievous bodily harm, with intent: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118);
- 49 (5) rape or an attempt to commit rape (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 165 et seq);
- 50 (6) an offence under the Sexual Offences Act 1956 (intercourse with a girl under 13) (repealed);
- 51 (7) an offence under the Sexual Offences Act 2003 s 1 or s 2 (rape, assault by penetration: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 165, 167);
- 52 (8) an offence under s 4 (causing a person to engage in sexual activity without consent: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 171), where the activity caused involved penetration within s 4(4)(a)-(d);
- 53 (9) an offence under s 5 or s 6 (rape of a child under 13, assault of a child under 13 by penetration: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 166, 168);
- 54 (10) an offence under s 8 (causing or inciting a child under 13 to engage in sexual activity: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 172), where an activity involving penetration within s 8(3)(a)-(d) was caused;
- 55 (11) an offence under s 30 (sexual activity with a person with a mental disorder impeding choice: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 197, 201), where the touching involved penetration within s 30(3)(a)-(d);
- 56 (12) an offence under s 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006

Reissue) PARAS 198, 201), where an activity involving penetration within s 31(3)(a)-(d) was caused;

- 57 (13) an attempt to commit an offence within any of heads (7) to (12);
- 58 (14) an offence under the Firearms Act 1968 s 16 (possession of a firearm with intent to injure: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 674), s 17 (use of a firearm to resist arrest: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 676) or s 18 (carrying a firearm with criminal intent: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 679); and
- 59 (15) robbery where, at some time during the commission of the offence, the offender had in his possession a firearm or imitation firearm within the meaning of the Firearms Act 1968 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 630, 631).

Corresponding Scottish and Northern Ireland offences are also specified for this purpose: see the Powers of Criminal Courts (Sentencing) Act 2000 s 109(6), (7) (as so repealed with savings).

2 The date on which the Crime (Sentences) Act 1997 s 2 (repealed and replaced by the Powers of Criminal Courts (Sentencing) Act 2000 s 109 (see the text and note 3)) was brought into force by the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200.

3 The Powers of Criminal Courts (Sentencing) Act 2000 s 109 (see the text and notes 4-8) was repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)).

4 As to the meaning of 'court' see PARA 1 note 1.

5 I.e.: (1) where the offender is 21 or over when convicted of the second serious offence, a sentence of imprisonment for life; or (2) where he is under 21 at that time, a sentence of custody for life under the Powers of Criminal Courts (Sentencing) Act 2000 s 94 (see PARA 79): Powers of Criminal Courts (Sentencing) Act 2000 s 109(2) (repealed with savings: see note 3). Section 109(2) is prospectively amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 160, 189, so that the court is required for these purposes to impose a sentence of imprisonment for life; at the date at which this volume states the law no date had been appointed for the coming into force of this amendment.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 109(1), (2) (repealed with savings: see note 3). An offence the sentence for which is imposed under s 109(2) is not regarded as an offence the sentence for which is fixed by law: s 109(4) (as so repealed with savings).

7 As to the meaning of 'open court' see PARA 23 note 3.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 109(3) (repealed with savings: see note 3).

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(3) PUNISHMENT OF YOUNG OFFENDERS

(i) Custody for Life and Detention

78. Detention of serious offenders aged under 18.

Where a person aged under 18¹ is convicted on indictment of:

- 380 (1) an offence punishable in the case of a person aged 21² or over with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law³;
- 381 (2) an offence⁴ of sexual assault⁵;
- 382 (3) a child sex offence⁶ committed by a child or young person⁷;
- 383 (4) an offence⁸ of sexual activity with a child family member⁹;
- 384 (5) an offence¹⁰ of inciting a child family member to engage in sexual activity¹¹; or
- 385 (6) a specified firearms offence in specified circumstances¹²,

and the court is of the opinion that neither a relevant community order¹³ nor a detention and training order¹⁴ is suitable¹⁵, the court may sentence the offender to be detained for such period, not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21¹⁶ or over, as may be specified in the sentence¹⁷.

A person sentenced to be so detained is liable to be detained under such conditions as the Secretary of State may direct¹⁸, or as the Secretary of State may arrange with any person¹⁹.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. The relevant age is the offender's age at the time of conviction, rather than his age at the time of sentence: *R v Robinson* [1993] 2 All ER 1, 96 Cr App Rep 418, CA.

2 As from a day to be appointed this age limit is reduced to 18: see the Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(a), (3) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 181). At the date at which this volume states the law no such day had been appointed.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(a) (prospectively amended: see note 2). As to sentences fixed by law see PARA 15.

4 Ie an offence under the Sexual Offences Act 2003 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 169).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(b) (s 91(1)(b), (c) substituted, and s 91(1)(d), (e) added, by the Sexual Offences Act 2003 Sch 6 para 43(1), (2)).

6 Ie an offence under the Sexual Offences Act 2003 s 13 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 177).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(c) (as substituted: see note 5).

8 Ie an offence under the Sexual Offences Act 2003 s 25 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 191, 193, 195).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(d) (as added: see note 5).

10 le an offence under the Sexual Offences Act 2003 s 26 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 191, 193, 195).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 91(1)(e) (as added: see note 5).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 91(1A)-(1C) (s 91(1A), (5) added, and s 91(3), (4) amended, by the Criminal Justice Act 2003 Sch 32 paras 90, 110, subject to a saving in relation to offences committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2), (3)); Powers of Criminal Courts (Sentencing) Act 2000 s 91(1A)(b), (5) amended, and s 91(1B), (1C) added, by the Violent Crime Reduction Act 2006 Sch 1 para 7). The specified firearms offences and circumstances are:

- 60 (1) any offence under the Firearms Act 1968 s 5(1)(a), (ab), (aba), (ac) (ad), (ae), (af) or (c) or s 5(1A)(a) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 661) committed after 22 January 2004 at a time (for the purposes of s 51A(3)) when the person was aged 16 or over and where the court is of the opinion mentioned in s 51A(2) (exceptional circumstances which justify its not imposing required custodial sentence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 664) (Powers of Criminal Courts (Sentencing) Act 2000 s 91(1A) (as so added and amended));
- 61 (2) any offence under the Firearms Act 1968 that is listed in s 51A(1A)(b), (e) or (f) (minimum sentences for certain offences: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) committed in respect of a firearm or ammunition specified in s 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or s 5(1A)(a) after 6 April 2007 at a time (for the purposes of the Firearms Act 1968 s 51A(3): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 664) when the person was aged 16 or over and where the court is of the opinion mentioned in s 51A(2) (Powers of Criminal Courts (Sentencing) Act 2000 s 91(1B) (as so added)); and
- 62 (3) any offence under the Violent Crime Reduction Act 2006 s 28 (using someone to mind a weapon: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) where s 29(3) (minimum sentences in certain cases: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) applies and the court is of the opinion mentioned in s 29(6) (exceptional circumstances which justify not imposing the minimum sentence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) (Powers of Criminal Courts (Sentencing) Act 2000 s 91(1C) (as so added)).

22 January 2004 is the date on which the Firearms Act 1968 s 51A was brought into force by the Criminal Justice Act 2003 (Commencement No 2 and Saving Provisions) Order 2004, SI 2004/81. 6 April 2007 is the date on which the Violent Crime Reduction Act 2006 s 30 was brought into force by the Violent Crime Reduction Act 2006 (Commencement No 2) Order 2007, SI 2007/858.

Where the Firearms Act 1968 s 51A(2) or the Violent Crime Reduction Act 2006 s 29(6) requires the imposition of a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 for a term of at least the term provided for in those provisions the court must sentence the offender to be detained for such period, of at least the term so provided for but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence: Powers of Criminal Courts (Sentencing) Act 2000 s 91(5) (as so added and amended).

13 le, until a day to be appointed, a community sentence (see PARA 163) or, as from that day, a youth rehabilitation order (see PARA 202): Powers of Criminal Courts (Sentencing) Act 2000 s 91(3) (as amended: see note 12; prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 4 paras 51, 56). At the date at which this volume states the law no day had been appointed for the coming into force of the amendments made by the Criminal Justice and Immigration Act 2008.

14 See PARA 89.

15 'Suitable' refers to the type of sentence, not merely its length: *R v B (A Minor) (Sentence: Jurisdiction)* [1999] 1 WLR 61, sub nom *R v Brown* [1998] Crim LR 588, CA.

16 As from a day to be appointed this age limit is reduced to 18: see note 2.

17 Powers of Criminal Courts (Sentencing) Act 2000 s 91(3) (as amended and prospectively amended: see notes 2, 12). A sentence of detention under s 91 is a 'custodial sentence' for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 (see s 76; and PARA 20 note 2) and this power is therefore subject, in particular, to the Criminal Justice Act 2003 ss 152, 153 (see PARA 19, 32): Powers of Criminal Courts (Sentencing) Act 2000 s 91(4) (as so amended). Although it is not necessary, in order to invoke the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 s 91, for a crime to be one of exceptional gravity, the power to make an order for detention is a 'long stop reserved for very serious offences': *R (on the application of the Crown Prosecution Service) v Redbridge Youth Court* [2005] EWHC 1390 (Admin), 169 JP 393, DC.

As to the principles to be applied in considering whether a youth court should commit a juvenile for trial with a view to a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 see *R (on the application of H) v Southampton Youth Court* [2004] EWHC 2912 (Admin), 169 JP 37, [2005] Crim LR 395, [2004] All ER (D) 38 (Dec). As to the court's obligation to have regard to a young offender's welfare see *R v Secretary of State for the Home Department, ex p Furber* [1998] 1 All ER 23, [1998] 1 Cr App Rep (S) 208, DC (approved in *R v Marklew* [1998] Crim LR 512, CA).

A judge imposing a sentence under these provisions must have regard to the period during which the offender's activities might be a source of danger to the public: *R v Storey* [1973] 3 All ER 562, 57 Cr App Rep 840, CA. In a proper case, a sentence of general deterrence may be passed: *R v Ford* (1976) 62 Cr App Rep 303, [1976] Crim LR 391, CA; *R v Nightingale* (1984) 6 Cr App Rep (S) 65, [1984] Crim LR 373, CA; but this is subject to the Criminal Justice Act 2003 s 153(2) (see PARA 32). For guidelines on the use of this provision see *R v AM* [1998] 1 WLR 363, [1998] 2 Cr App Rep 57, CA.

The powers under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 are limited to those convicted in the Crown Court; they may not be exercised by a youth court, nor by the Crown Court on a committal for sentence from a youth court: *R v McKenna* (1985) 7 Cr App Rep (S) 348, [1986] Crim LR 195, CA.

18 Powers of Criminal Courts (Sentencing) Act 2000 s 92(1)(a). A person detained pursuant to the directions or arrangements made by the Secretary of State under s 92 is deemed to be in legal custody: s 92(2).

19 Powers of Criminal Courts (Sentencing) Act 2000 s 92(1)(b). See note 18.

UPDATE

78 Detention of serious offenders aged under 18

NOTE 13--Day appointed is 30 November 2009: SI 2009/3074.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/3. IMPRISONMENT AND DETENTION OF DANGEROUS OFFENDERS/(3) PUNISHMENT OF YOUNG OFFENDERS/(i) Custody for Life and Detention/79. Custody for life.

79. Custody for life.

Until a day to be appointed¹, where a person under the age of 21² is convicted of murder or any other offence the sentence for which is fixed by law as imprisonment for life, the court must sentence him to custody for life unless he is liable to be detained³ during Her Majesty's pleasure⁴; and where a person aged at least 18 but under 21 is convicted of an offence for which the sentence is not fixed by law⁵, but for which a person aged 21 years or over would be liable to imprisonment for life⁶, the court must, if it considers that a sentence for life would be appropriate, sentence him to custody for life⁷.

As from a day to be appointed no court is to pass a sentence of custody for life⁸.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94 (see the text and notes 2-7) are repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 182, Sch 8. At the date at which this volume states the law no such day had been appointed. See further the text and note 8.

2 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where an offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 228; and PARA 84.

3 He under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see PARA 81).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 93 (prospectively repealed: see note 1). See also PARA 21. As to sentences fixed by law see PARA 15. The provisions of the Criminal Justice Act 2003 Pt 12 Ch 7 (ss 269-277) (effect of life sentences) apply to a sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 93: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90. As to release on licence see **PRISONS** vol 36(2) (Reissue) PARA 621.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 94(1)(a) (prospectively repealed: see note 1).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 94(1)(b) (prospectively repealed: see note 1).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 94(1) (prospectively repealed: see note 1).

8 Criminal Justice and Court Services Act 2000 s 61(1) (not yet in force): see also PARAS 11, 85. Service courts are similarly prohibited from passing a custodial order (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 431-432) except in relation to a person who is aged at least 17 but under 18: see the Criminal Justice and Court Services Act 2000 s 61(1), (8) (not yet in force). At the date at which this volume states the law no day had been appointed for the commencement of s 61.

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80. Custody for life for serious offences where there is a significant risk of serious harm.

Where:

386 (1) a person aged at least 18 but under 21¹ is convicted of a serious offence² committed on or after 4 April 2005³; and

387 (2) the court⁴ is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further serious offences⁵,

the court must, until a day to be appointed⁶, impose a sentence⁷ of custody for life if:

388 (a) the offence is one in respect of which the offender would otherwise⁸ be liable to imprisonment for life⁹; and

389 (b) the court considers that the seriousness¹⁰ of the offence, or of the offence and one or more offences associated¹¹ with it, is such as to justify the imposition of a sentence of imprisonment for life¹².

Where these condition are not met the court may impose a sentence of detention in a young offender institution for public protection¹³.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where a dangerous offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 226; and PARA 82.

2 As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 Criminal Justice Act 2003 s 225(1)(a). As to 4 April 2005 see PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 225(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 I.e. until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005, SI 2005/643, art 3(4)(a).

7 An offence the sentence for which is imposed under the Criminal Justice Act 2003 s 225 is not to be regarded as an offence the sentence for which is fixed by law: s 225(5).

8 I.e. apart from the Criminal Justice Act 2003 s 225: see the text and notes 1-7, 9-13; and PARA 74.

9 Criminal Justice Act 2003 s 225(2)(a). As to the court's considerations see PARA 73 note 10.

10 See PARA 618 et seq.

11 As to an 'associated offence' see PARA 19 note 9.

12 Criminal Justice Act 2003 s 225(2)(b). As to the court's considerations see PARA 73 note 13.

13 See PARA 87.

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81. Detention during Her Majesty's pleasure.

Where a person convicted of murder or any other offence the sentence for which is fixed by law as life imprisonment appears to the court to have been aged under 18¹ at the time the offence was committed, the court must² sentence him to be detained during Her Majesty's pleasure³, and, if so sentenced, he is liable to be detained in such place and under such conditions as the Secretary of State may direct⁴ or may arrange with any person⁵.

1 As to the determination of a person's age for these purposes see PARA 27 note 13.

2 Ie notwithstanding anything in the Powers of Criminal Courts (Sentencing) Act 2000 or any other Act, and irrespective of the offender's age at the date of conviction.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 90 (amended by the Criminal Justice and Court Services Act 2000 s 60(2), (3)). See PARA 21; and see further **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1405. The provisions of the Criminal Justice Act 2003 Pt 12 Ch 7 (ss 269-277) (effect of life sentences) apply to a sentence of detention during Her Majesty's pleasure: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90. As to release on licence and supervision after release see **PRISONS** vol 36(2) (Reissue) PARAS 621, 628.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 92(1)(a). A person detained pursuant to the directions or arrangements made by the Secretary of State under s 92 is deemed to be in legal custody: s 92(2).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 92(1)(b). See further note 4; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90.

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(ii) Detention for Public Protection and Extended Sentences

82. Life sentence for offenders aged under 18 where there is a significant risk of serious harm.

Where:

390 (1) a person aged under 18¹ is convicted of a serious offence² committed on or after 4 April 2005³; and

391 (2) the court⁴ is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further serious offences⁵,

the court must impose a sentence⁶ of detention for life⁷ if:

392 (a) the offence is one in respect of which the offender would otherwise⁸ be liable⁹ to a sentence of detention for life¹⁰; and

393 (b) the court considers that the seriousness¹¹ of the offence, or of the offence and one or more offences associated¹² with it, is such as to justify the imposition of a sentence of detention for life¹³.

Where these condition are not met the court may impose a sentence of detention for public protection¹⁴.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where a dangerous offender is aged 18 or over at the time of conviction see the Criminal Justice Act 2003 s 225; and PARA 73.

2 As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 Criminal Justice Act 2003 s 226(1)(a). As to 4 April 2005 see PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 226(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 An offence the sentence for which is imposed under the Criminal Justice Act 2003 s 226 is not to be regarded as an offence the sentence for which is fixed by law: s 226(5).

7 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78).

8 Ie apart from the Criminal Justice Act 2003 s 226: see the text and notes 1-7, 9-14; and PARA 83.

9 See note 7.

10 Criminal Justice Act 2003 s 226(2)(a). As to the court's considerations pursuant to the corresponding provisions for older offenders under s 225 see PARA 73 note 10.

- 11 See PARA 618 et seq.
- 12 As to an 'associated offence' see PARA 19 note 9.
- 13 Criminal Justice Act 2003 s 226(2)(b). As to the court's considerations pursuant to the corresponding provisions for older offenders under s 225 see PARA 73 note 13.
- 14 See PARA 83.

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83. Detention for public protection of offenders aged under 18 who have committed serious offences.

Where:

394 (1) a person aged under 18¹ is convicted of a serious offence² committed on or after 4 April 2005³; and

395 (2) the court⁴ is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further serious offences⁵,

but:

396 (a) the offence is not one in respect of which the offender would otherwise⁶ be liable⁷ to detention for life⁸; and

397 (b) the court does not consider that the seriousness⁹ of the offence, or of the offence and one or more offences associated¹⁰ with it, is such as to justify the imposition of a sentence of detention for life¹¹,

the court may impose a sentence¹² of detention for public protection if the notional minimum term¹³ is at least two years¹⁴.

A sentence of detention for public protection is a sentence of detention for an indeterminate period which is subject to specified provisions¹⁵ as to the release of prisoners and duration of licences¹⁶.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where a dangerous offender is aged 18 or over at the time of conviction see the Criminal Justice Act 2003 s 225; and PARA 74.

2 As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 See the Criminal Justice Act 2003 s 226(1)(a); and PARA 82. As to 4 April 2005 see PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 226(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 Ie apart from the Criminal Justice Act 2003 s 226: see the text and notes 1-5, 7-16; and PARA 82.

7 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARAS 78, 82).

8 See the Criminal Justice Act 2003 s 226(2)(a); and PARA 82. As to the court's considerations pursuant to the corresponding provisions for older offenders under s 225 see PARA 73 note 10.

9 See PARA 618 et seq.

10 As to an 'associated offence' see PARA 19 note 9.

11 See the Criminal Justice Act 2003 s 226(2)(b). As to the court's considerations pursuant to the corresponding provisions for older offenders under s 225 see PARAS 73 note 13, 74 note 10.

12 An offence the sentence for which is imposed under the Criminal Justice Act 2003 s 226 is not to be regarded as an offence the sentence for which is fixed by law: s 226(5).

13 The 'notional minimum term' is the part of the sentence that the court would specify under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) (determination of tariff: see PARA 33) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in s 82A(3)(b) (crediting periods of remand): Criminal Justice Act 2003 s 226(3A) (s 226(3) substituted, s 226(3A) added, by the Criminal Justice and Immigration Act 2008 s 14.

14 Criminal Justice Act 2003 s 226(3) (as substituted: see note 13). With particularly young offenders, indeterminate sentences may be inappropriate for serious offences where there is a significant risk of harm from further offences: *R v D* [2005] EWCA Crim 2292, [2006] Crim LR 73, 169 JP 662, CA.

15 *le* the Crime (Sentences) Act 1997 Pt 2 Ch 2 (ss 28-34) (see **PRISONS** vol 36(2) (Reissue) PARAS 621-627).

16 Criminal Justice Act 2003 s 226(4). See *R v Lang* [2005] EWCA Crim 2864, [2006] 2 All ER 410, [2006] 1 WLR 2509; and PARA 74 note 19.

UPDATE

83 Detention for public protection of offenders aged under 18 who have committed serious offences

NOTE 14--See also *R v C* [2010] All ER (D) 31 (May), CA (indeterminate sentence appropriate for young offenders due to seriousness of crime).

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84. Extended sentence for public protection.

Where:

398 (1) a person aged under 18¹ is convicted of a specified violent or sexual offence² committed on or after 4 April 2005³; and

399 (2) the court⁴ considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences⁵ but, where the specified offence is a serious offence⁶, that the case is not one in which the court is required⁷ to impose a sentence⁸ of detention for life⁹,

the court may impose on the offender an extended sentence of detention if, were the court to impose such a sentence, the term that it would specify as the appropriate custodial term¹⁰ would be at least four years¹¹.

An extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of the appropriate custodial term and a further period (the 'extension period') for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences¹². The term of an extended sentence (ie the aggregate of the custodial term and the extension period) must not exceed the maximum term of imprisonment permitted for the offence¹³ and the extension period must not exceed five years (in the case of a specified violent offence) or eight years (in the case of a specified sexual offence)¹⁴.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where an offender is aged 18 or over at the time of conviction see the Criminal Justice Act 2003 s 227; and PARA 75.

2 As to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 Criminal Justice Act 2003 s 228(1)(a). As to 4 April 2005 see PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 As to the 'serious offences' for these purposes see PARA 68.

7 Ie by the Criminal Justice Act 2003 s 226(2) (see PARA 82).

8 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78).

9 Criminal Justice Act 2003 s 228(1)(b) (s 228(1)(b), (2), (3) amended, s 228(2A), (2B), (7) added, by the Criminal Justice and Immigration Act 2008 s 16, Sch 28 Pt 2).

10 For these purposes 'appropriate custodial term' means such term as the court considers appropriate which must not exceed the maximum term permitted for the offence: Criminal Justice Act 2003 s 228(3) (as amended: see note 9).

11 Criminal Justice Act 2003 s 228(2), (2A) (as amended and added: see note 9). The Secretary of State may by order amend s 228(2A) so as to substitute a different period for the period for the time being specified: s 228(7) (as so added). At the date at which this volume states the law no such orders had been made.

Where offenders are to be sentenced for several offences, only some of which are specified, a court which imposes an indeterminate sentence under s 228 for the principal offences should generally impose a shorter concurrent term for the other offences: *R v Lang* [2005] EWCA Crim 2864, [2006] 2 All ER 410, [2006] 1 WLR 2509.

12 Criminal Justice Act 2003 s 228(2B) (as added: see note 9). The Court of Appeal has tentatively concluded that the extension period under s 228 begins to run at the end of the custodial period, whether or not part of the custodial period is 'served' on licence: *R v S* [2005] EWCA Crim 3616, 170 JP 145, [2006] 2 Cr App Rep (S) 224.

13 Criminal Justice Act 2003 s 228(5). Any reference in s 228 to the maximum term of imprisonment permitted for an offence is a reference to the maximum term of imprisonment that is, apart from s 225 (see PARAS 73, 74), permitted for the offence in the case of a person aged 18 or over: s 228(6).

14 Criminal Justice Act 2003 s 228(4).

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(iii) Detention in a Young Offender Institution

85. Power to order detention.

Until a day to be appointed¹, where a person aged at least 18 but under 21² is convicted of an offence which is punishable with imprisonment in the case of a person aged 21 or over³, the court⁴ must pass a sentence of detention in a young offender institution⁵ if it is of the opinion:

- 400 (1) that the offence, or a combination of the offence and one or more offences associated⁶ with it, was so serious that only such a sentence could be justified for it⁷; or
- 401 (2) where the offence was a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him⁸,

or if the offender fails to express his willingness to comply with:

- 402 (a) a requirement which is proposed by the court to be included in a community rehabilitation order⁹ or supervision order¹⁰ and which requires an expression of such willingness¹¹; or
- 403 (b) a requirement which is proposed by the court to be included in a drug treatment and testing order¹² or an order¹³ to provide samples¹⁴.

As from a day to be appointed no court is to pass a sentence of detention in a young offender institution¹⁵.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 s 96 (see the text and notes 2-14) is repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 182, Sch 8. At the date at which this volume states the law no such day had been appointed.

2 As to the determination of a person's age for these purposes see PARA 27 note 13.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 96(a) (prospectively repealed: see note 1).

4 As to the meaning of 'court' see PARA 1 note 1.

5 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see PARA 81), s 93 (see PARA 79) and s 94 (see PARA 79): s 96 (prospectively repealed: see note 1). A sentence of detention in a young offender institution is a 'custodial sentence' for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 (see s 76; and PARA 20 note 2) and the court must therefore comply with the Criminal Justice Act 2003 ss 152, 153, 158 (see PARAS 19, 32, 626). As to the aims and general principles of young offender institutions, remission etc see the Young Offender Institution Rules 2000, SI 2000/3371; and **PRISONS**. See also PARA 21. As to the suspension of a sentence of detention in a young offender institution see the Criminal Justice Act 2003 s 189; and PARAS 110, 111.

6 As to an 'associated offence' see PARA 19 note 9.

7 Powers of Criminal Courts (Sentencing) Act 2000 ss 79(2)(a), 96(b) (s 96 prospectively repealed: see note 1). Section 79 (see the text and notes 8-14) was repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act

2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 79(2)(b) (repealed with savings: see note 7); s 96(b) (prospectively repealed: see note 1).

9 See PARA 195.

10 See PARA 368.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 79(3)(a) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 1; repealed with savings (see note 7)); Powers of Criminal Courts (Sentencing) Act 2000 s 96(b) (prospectively repealed: see note 1).

12 See PARA 198.

13 Is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 52(4) (repealed).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 79(3)(b) (repealed with savings: see note 7); s 96(b) (prospectively repealed: see note 1).

15 Criminal Justice and Court Services Act 2000 s 61(1) (not yet in force): see also PARA 11. Service courts are similarly prohibited from passing a custodial order (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 431-432) except in relation to a person who is aged at least 17 but under 18: see the Criminal Justice and Court Services Act 2000 s 61(1), (8) (not yet in force). At the date at which this volume states the law no day had been appointed for the commencement of s 61.

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86. Term of detention.

Until a day to be appointed¹ the maximum term of detention in a young offender institution² that a court³ may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence⁴, although a court may not⁵ pass sentence⁶ for an offender's detention in a young offender institution for less than 21 days⁷. Where an offender is convicted of more than one offence for which he is liable to a sentence of detention in a young offender institution, or an offender who is serving such a sentence is convicted of one or more further offences for which he is liable to such a sentence, the court has the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment⁸; and where⁹ an offender aged 21 or over¹⁰ who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which he is liable to imprisonment, the court has the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution¹¹.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 s 97 (see the text and notes 2-11) is repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 182, Sch 8. At the date at which this volume states the law no such day had been appointed.

2 As to the power to order detention see PARA 85.

3 As to the meaning of 'court' see PARA 1 note 1.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 97(1) (prospectively repealed: see note 1).

5 He subject to the Criminal Justice Act 1991 s 65(6) (breach of requirement imposed on young offender on release from detention: see **PRISONS** vol 36(2) (Reissue) PARA 628).

6 'Sentence' refers to the sentence imposed for a particular offence, rather than to the total sentence produced by aggregating more than one custodial term: *R v Dover Youth Court, ex p K (A Minor)* [1998] 4 All ER 24, [1999] 1 Cr App Rep (S) 263, DC.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 97(2), (3) (prospectively repealed: see note 1).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 97(4) (prospectively repealed: see note 1).

9 He subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 84 (repealed).

10 As to the determination of a person's age for these purposes see PARA 27 note 13.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 97(5) (prospectively repealed: see note 1).

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87. Detention for public protection for serious offences.

Where:

- 404 (1) a person at least 18 but under 21¹ is convicted of a serious offence² committed on or after 4 April 2005³; and
- 405 (2) the court⁴ is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further serious offences⁵,

but:

- 406 (a) the offence is not one in respect of which the offender would otherwise⁶ be liable to imprisonment for life⁷; and
- 407 (b) the court does not consider that the seriousness⁸ of the offence, or of the offence and one or more offences associated⁹ with it, is such as to justify the imposition of a sentence of imprisonment for life¹⁰,

the court may¹¹ impose a sentence¹² of detention in a young offender institution¹³ for public protection if either:

- 408 (i) at the time the offence was committed, the offender had been convicted of an offence capable of triggering a sentence of imprisonment for public protection¹⁴; or
- 409 (ii) the notional minimum term¹⁵ is at least two years¹⁶.

A sentence of detention in a young offender institution for public protection is a sentence of detention for an indeterminate period which is subject to specified provisions¹⁷ as to the release of prisoners and duration of licences¹⁸.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where a dangerous offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 226; and PARA 82.

2 As to the meaning of 'serious offence' see PARA 68; and as to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 See the Criminal Justice Act 2003 s 225(1)(a); and PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 225(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 Ie apart from the Criminal Justice Act 2003 s 225: see PARA 73.

7 See the Criminal Justice Act 2003 s 225(2)(a); and PARA 73 note 10.

8 See PARA 618 et seq.

9 As to an 'associated offence' see PARA 19 note 9.

10 See the Criminal Justice Act 2003 s 225(2)(b); and PARAS 73 note 13, 74 note 10.

11 Ie until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587, art 2(1), (2).

12 An offence the sentence for which is imposed under the Criminal Justice Act 2003 s 225 is not to be regarded as an offence the sentence for which is fixed by law: s 225(5).

Where a sentence has been imposed on any person under s 225(3), the condition in s 225(3A) (see the text and notes 13-14) was met but the condition in s 225(3B) (see the text and notes 15-16) was not, and any previous conviction of his without which the condition in s 225(3A) would not have been met has been subsequently set aside on appeal, then notwithstanding anything in the Criminal Appeal Act 1968 s 18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1863), notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside: Criminal Justice Act 2003 s 231 (substituted by the Criminal Justice and Immigration Act 2008 s 18(1)).

13 See PARA 85.

14 Criminal Justice Act 2003 s 225(3), (3A) (s 225(3) substituted, s 225(3A)-(3C) added, by the Criminal Justice and Immigration Act 2008 s 13(1)). As to the offences capable of triggering a sentence of imprisonment for public protection see the Criminal Justice Act 2003 Sch 15A; and PARA 72. Where on any date after 14 July 2008 (ie the date on which Sch 15A was brought into force by the Criminal Justice and Immigration Act 2008 (Commencement No 2 and Transitional and Saving Provisions) Order 2008, SI 2008/1586) a person is convicted in England and Wales of an offence specified in the Criminal Justice Act 2003 Sch 15A, the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and that court subsequently certifies that fact, that certificate is evidence for the purposes of s 225(3A) that he was convicted of such an offence on that date: s 232 (amended by the Criminal Justice and Immigration Act 2008 s 18(2)). As to the meaning of 'open court' see PARA 23 note 3.

15 The 'notional minimum term' is the part of the sentence that the court would specify under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(2) (determination of tariff: see PARA 33) if it imposed a sentence of detention in a young offender institution for public protection but was required to disregard the matter mentioned in s 82A(3)(b) (crediting periods of remand): Criminal Justice Act 2003 s 225(3C) (as added: see note 14); Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587, art 2(1), (2).

16 Criminal Justice Act 2003 s 225(3B) (as added: see note 14).

17 Ie the Crime (Sentences) Act 1997 Pt 2 Ch 2 (ss 28-34) (see **PRISONS** vol 36(2) (Reissue) PARAS 621-627).

18 Criminal Justice Act 2003 s 225(4) (amended by SI 2005/643).

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88. Extended sentence for certain violent or sexual offences.

Where:

- 410 (1) a person aged at least 18 but under 21¹ is convicted of a specified violent or sexual offence² committed on or after 4 April 2005³; and
- 411 (2) the court⁴ considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences⁵; but
- 412 (3) the court is not required⁶ to impose a sentence of custody for life⁷,

the court may, until a day to be appointed⁸, impose on the offender an extended sentence of detention in a young offender institution⁹ if either:

- 413 (a) at the time the offence was committed, the offender had been convicted of an offence capable of triggering an extended sentence under these provisions¹⁰; or
- 414 (b) if the court were to impose an extended sentence of detention in a young offender institution the term that it would specify as the appropriate custodial term¹¹ would be at least four years¹².

An extended sentence of detention in a young offender institution is a sentence of detention the term of which is equal to the aggregate of the appropriate custodial term and a further period (the 'extension period') for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences¹³. The term of an extended sentence (ie the aggregate of the custodial term and the extension period) must not exceed the maximum term permitted for the offence¹⁴ and the extension period must not exceed five years (in the case of a specified violent offence) or eight years (in the case of a specified sexual offence)¹⁵.

1 As to the determination of a person's age for these purposes see PARA 27 note 13. As to the position where an offender is under 18 at the time of conviction see the Criminal Justice Act 2003 s 228; and PARA 84.

2 As to the violent and sexual offences specified for these purposes see PARAS 70-71.

3 Criminal Justice Act 2003 s 227(1)(a) (s 227(1)(a), (c), (2), (3) amended, s 227(2A)-(2C), (6) added, by the Criminal Justice and Immigration Act 2008 s 15, Sch 28 Pt 2; Criminal Justice Act 2003 s 227(1)(c), (2), (2B), (2C), (3), (5) amended until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force by SI 2005/643; SI 2008/1587). As to 4 April 2005 see PARA 73 note 3.

4 As to the meaning of 'court' see PARA 1 note 1.

5 Criminal Justice Act 2003 s 227(1)(b). As to when there is a significant risk of serious harm to members of the public see PARA 69.

6 Ie by the Criminal Justice Act 2003 s 225(2): see PARA 73.

7 Criminal Justice Act 2003 s 227(1)(c) (as amended: see note 3).

8 le until the date on which the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11) comes into force: Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587, art 2(1), (2).

9 Criminal Justice Act 2003 s 227(2) (as amended: see note 3). As to detention in a young offender institution see PARA 85. Where a sentence has been imposed on any person under the Criminal Justice Act 2003 s 227(2), the condition in s 227(2A) (see the text and note 10) was met but the condition in s 227(2B) (see the text and notes 11-12) was not, and any previous conviction of his without which the condition in s 227(2A) would not have been met has been subsequently set aside on appeal, then notwithstanding anything in the Criminal Appeal Act 1968 s 18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1863), notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside: Criminal Justice Act 2003 s 231 (substituted by the Criminal Justice and Immigration Act 2008 s 18(1)).

10 Criminal Justice Act 2003 s 227(2A) (as added: see note 3). As to an offence capable of triggering an extended sentence under these provisions see Sch 15A; and PARA 72. Where on any date after 14 July 2008 (ie the date on which Sch 15A was brought into force by the Criminal Justice and Immigration Act 2008 (Commencement No 2 and Transitional and Saving Provisions) Order 2008, SI 2008/1586) a person is convicted in England and Wales of an offence specified in the Criminal Justice Act 2003 Sch 15A, the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and that court subsequently certifies that fact, that certificate is evidence for the purposes of the Criminal Justice Act 2003 227(2A) that he was convicted of such an offence on that date: s 232 (amended by the Criminal Justice and Immigration Act 2008 s 18(2)). As to the meaning of 'open court' see PARA 23 note 3.

11 For these purposes 'appropriate custodial term' means a term of detention in a young offender institution (not exceeding the maximum term permitted for the offence) which is the term that would (apart from the Criminal Justice Act 2003 s 227) be imposed in compliance with s 153(2) (see PARA 32) or, where the term that would be so imposed is a term of less than 12 months, is a term of 12 months: s 227(3) (as amended: see note 3).

12 Criminal Justice Act 2003 s 227(2B) (as added and amended: see note 3). The Secretary of State may by order amend s 227(2B) so as to substitute a different period for the period for the time being specified: s 227(6) (as so added). At the date at which this volume states the law no such orders had been made.

13 Criminal Justice Act 2003 s 227(2C) (as added and amended: see note 3). The Court of Appeal has tentatively concluded that the extension period under s 227 begins to run at the end of the custodial period, whether or not part of the custodial period is 'served' on licence: *R v S* [2005] EWCA Crim 3616, 170 JP 145, [2006] 2 Cr App Rep (S) 224.

14 Criminal Justice Act 2003 s 227(5) (as amended: see note 3).

15 Criminal Justice Act 2003 s 227(4).

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(iv) Detention and Training Orders

89. Power to make orders.

Where a child or young person¹ is convicted of an offence which is punishable with imprisonment in the case of a person aged 21² or over³ and:

- 415 (1) the court⁴ is of the opinion that that the offence, or the combination of the offence and one or more offences associated⁵ with it, was so serious⁶ that neither a fine⁷ alone nor a community sentence⁸ can be justified for the offence⁹; or
- 416 (2) the offender fails either to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness or to comply with a pre-sentence drug testing order¹⁰,

the sentence that the court is to pass is a detention and training order¹¹.

However, a court may not make a detention and training order:

- 417 (a) in the case of an offender under the age of 15 at the time of the conviction, unless it is of the opinion that he is a persistent offender¹²;
 - 418 (b) in the case of an offender under the age of 12 at that time unless:
7
 - 34. (i) it is of the opinion that only a custodial sentence¹³ will be adequate to protect the public from further offending by him¹⁴; and
 - 35. (ii) the offence was committed on or after such date as the Secretary of State may by order¹⁵ appoint¹⁶.
- 8

A detention and training order is an order that the offender in respect of whom it is made is to be subject, for the term specified in the order, to a period of detention and training followed by a period of supervision¹⁷.

1 le any person under 18: Powers of Criminal Courts (Sentencing) Act 2000 s 100(1)(a). As to the determination of a person's age for these purposes see PARA 27 note 13.

2 As from a day to be appointed this age limit is reduced to 18: see the Powers of Criminal Courts (Sentencing) Act 2000 s 100(1)(a) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 184). At the date at which this volume states the law no such day had been appointed. A detention and training order may be made in relation to an offender who was under 18 when proceedings were begun notwithstanding that he has attained the age of 18 at the time of conviction: *Aldis v DPP* [2002] EWHC 403 (Admin), [2002] 2 Cr App Rep (S) 400, DC (referring to the Children and Young Persons Act 1963 s 29(1) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1244)).

3 Powers of Criminal Courts (Sentencing) Act 2000 s 100(1)(a) (prospectively amended: see note 2).

4 As to the meaning of 'court' see PARA 1 note 1.

5 As to an 'associated offence' see PARA 19 note 9.

6 As to the seriousness of an offence for these purposes see PARA 19 note 10; and as to the determination of the seriousness of an offence see PARA 618.

7 See PARA 139.

8 As to the meaning of 'community sentence' see PARA 163.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 100(1)(b) (s 100(1) amended, s 100(1)(b) substituted, by the Criminal Justice Act 2003 Sch 32 paras 90, 111(2)); Criminal Justice Act 2003 s 152(2). See further PARA 19 note 13.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 100(1)(b) (as amended and substituted: see note 9); Criminal Justice Act 2003 s 152(3). As to pre-sentence drug testing orders see s 161(2); and PARA 629.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 100(1) (as amended: see note 9). This is subject to s 90 (see PARA 81), s 91 (see PARA 78) and s 100(2) (see the text and notes 12-16) and to the Criminal Justice Act 2003 ss 226, 228 (see PARAS 82-84): Powers of Criminal Courts (Sentencing) Act 2000 s 100(1) (as so amended). A detention and training order is a 'custodial sentence' for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 (see s 76; and PARA 20 note 2) and the court must therefore comply with the Criminal Justice Act 2003 ss 152, 153, 158 (see PARAS 19, 32, 626). See also PARA 21.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 100(2)(a). In determining whether an offender under 15 could be considered as a 'persistent offender', account may be taken of offences in respect of which he has been cautioned or given a reprimand or warning (*R v AD* [2001] 1 Cr App Rep (S) 202, CA) or of offences subsequent to the index offence (*R v B* [2001] 1 Cr App Rep (S) 389, CA), and the matter should be looked at according to the 'good sense of the court' (*R v B*). An offender with no previous conviction who is convicted on the same occasion of a number of offences committed within a short period of time may be a persistent offender (*R v AS* [2001] 1 Cr App Rep (S) 62, CA); see, however, *R v G* [2008] EWCA Crim 2112, [2008] All ER (D) 39 (Sep). It is wrong to impose a detention and training order on a person aged 15, for an offence committed when he was 14, for which he would not have qualified at 14 because he was not a persistent offender: *R v LM* [2002] EWCA Crim 3047, [2003] 2 Cr App Rep (S) 124, [2003] Crim LR 205, CA.

13 As to the meaning of 'custodial sentence' see PARA 20 note 2.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 100(2)(b)(i).

15 At the date at which this volume states the law no such order had been made.

16 Powers of Criminal Courts (Sentencing) Act 2000 s 100(2)(b)(ii).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 100(3). The supervision of children and young persons sentenced to a detention and training order is a 'youth justice service' for the purposes of the Crime and Disorder Act 1998 ss 39-41: see s 38(4)(h); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702. As to the provision and management of secure training centres see the Prisons Act 1952 ss 43, 47; and **PRISONS** vol 36(2) (Reissue) PARA 701.

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90. Term of detention and training order.

The term of a detention and training order¹ made in respect of an offence (whether by a magistrates' court or otherwise) must² be 4, 6, 8, 10, 12, 18 or 24 months³. However, the term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21⁴ or over) impose for the offence⁵, and as from a day to be appointed the term may not exceed six months where the offence is a summary offence⁶ and the maximum term of imprisonment that a court could (in the case of an offender aged 18 or over) impose for the offence is 51 weeks⁷.

A court making a detention and training order may order that its term is to commence on the expiry of the term of any other detention and training order made by that or any other court⁸. However, a court must not make in respect of an offender a detention and training order the effect of which would be that he would be subject to detention and training orders for a term which exceeds 24 months⁹, and a court making a detention and training order must not order that its term is to commence on the expiry of the term of a detention and training order under which the period of supervision has already begun¹⁰. Where the term of the detention and training orders to which an offender would otherwise be subject exceeds 24 months, the excess must be treated as remitted¹¹.

Where a detention and training order (the 'new order') is made in respect of an offender who is subject to a detention and training order under which the period of supervision has begun (the 'old order'), the old order must be disregarded in determining:

- 419 (1) for the purposes of the restriction on the accumulation of orders for a term exceeding 24 months¹², whether the effect of the new order would be that the offender would be subject to detention and training orders for a term which exceeds 24 months¹³; and
- 420 (2) for the purposes of the provision relating to the excess of the detention and training orders that is treated as remitted where the total term exceeds 24 months¹⁴, whether the term of the detention and training orders to which the offender would otherwise¹⁵ be subject exceeds 24 months¹⁶.

In determining the term of a detention and training order for an offence, the court must take account¹⁷ of any period for which the offender has been remanded in custody¹⁸ or on bail subject to a qualifying curfew condition and an electronic monitoring condition¹⁹ in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence²⁰. However, this does not apply where a court proposes to make detention and training orders in respect of an offender for two or more offences, in which event in determining the total term of the detention and training orders it proposes to make in respect of the offender the court must take account of the total period (if any) for which he has been remanded²¹ in custody in connection with any of those offences, or any other offence the charge for which was founded on the same facts or evidence²². Once a period of remand has been taken account of in relation to a detention and training order made in respect of an offender for any offence or offences, it may not subsequently be taken account of in relation to such an order made in respect of the offender for any other offence or offences²³.

- 1 As to the making of a detention and training order see PARA 89.
- 2 le subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 101(2) (and, as from a day to be appointed, s 101(2A) (see the text and notes 6-7)).
- 3 Powers of Criminal Courts (Sentencing) Act 2000 s 101(1) (s 101(1) prospectively amended, s 101(2A) prospectively added, by the Criminal Justice Act 2003 s 298(1)). At the date at which this volume states the law no day had been appointed for the coming into force of these amendments. An offender who has pleaded guilty to any offence and who is liable to a term of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 for that offence may properly have that plea reflected by the imposition of a detention and training order for the maximum term: *R v March* [2002] EWCA Crim 551, [2002] 2 Cr App Rep (S) 448, [2002] Crim LR 509.
- 4 As to the determination of a person's age for these purposes see PARA 27 note 13. As from a day to be appointed this age limit is reduced to 18: see the Powers of Criminal Courts (Sentencing) Act 2000 s 101(2) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 185). At the date at which this volume states the law no such day had been appointed.
- 5 Powers of Criminal Courts (Sentencing) Act 2000 s 101(2) (prospectively amended: see note 4).
- 6 Powers of Criminal Courts (Sentencing) Act 2000 s 101(2A)(a) (prospectively added: see note 3).
- 7 Powers of Criminal Courts (Sentencing) Act 2000 s 101(2A)(b) (prospectively added: see note 3).
- 8 Powers of Criminal Courts (Sentencing) Act 2000 s 101(3). A court may impose a consecutive detention and training order notwithstanding that the aggregate term is not a period specified in s 101(1) (see the text and notes 1-3): *R v Norris* [2001] Crim LR 48, CA. A sentence imposed, or other order made, by the Crown Court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs: see the Powers of Criminal Courts (Sentencing) Act 2000 s 154(1); and PARA 30. As to when the sentence of detention takes effect where a court passes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order see s 106(1); and PARA 95.
- 9 Powers of Criminal Courts (Sentencing) Act 2000 s 101(4).
- 10 Powers of Criminal Courts (Sentencing) Act 2000 s 101(6). As to the period of supervision see s 103(1); and PARA 92.
- 11 Powers of Criminal Courts (Sentencing) Act 2000 s 101(5).
- 12 le for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 101(4) (see the text and note 9).
- 13 Powers of Criminal Courts (Sentencing) Act 2000 s 101(7)(a).
- 14 le for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 101(5) (see the text and note 11).
- 15 le apart from the Powers of Criminal Courts (Sentencing) Act 2000 s 101(5).
- 16 Powers of Criminal Courts (Sentencing) Act 2000 s 101(7)(b).
- 17 It is considered neither appropriate nor desirable to calculate mathematically the total term by reference to a few days in custody, but weeks or months spent in custody should reduce the sentence to reflect that period: *R v B* [2000] Crim LR 870, CA; *R v Inner London Crown Court, ex p N and S* [2000] Crim LR 871, DC. Accordingly, the court should as a matter of good practice indicate in advance its intention to make such an order so as to be informed of any time in custody on remand: *R v Haringey Youth Court, ex p A* (2000) Times, 30 May, DC. A period totalling 24 months may be upheld on appeal despite a guilty plea and a significant period in custody if the court could otherwise have imposed a term of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78): *R v Fieldhouse* [2001] 1 Cr App Rep (S) 104, [2000] Crim LR 1020, CA.
- 18 Any reference in the Powers of Criminal Courts (Sentencing) Act 2000 s 101(8) or s 101(9) (see the text and notes 19-22) to an offender being remanded in custody is a reference to him being:
 - 63 (1) held in police detention (s 101(11)(a));
 - 64 (2) remanded in or committed to custody by an order of a court (s 101(11)(b));

- 65 (3) remanded or committed to local authority accommodation under the Children and Young Persons Act 1969 s 23 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1247-1253) and placed and kept in secure accommodation or detained in a secure training centre pursuant to arrangements under s 23(7A) (Powers of Criminal Courts (Sentencing) Act 2000 s 101(11)(c) (amended by the Criminal Justice and Police Act 2001 s 133(3))); or
- 66 (4) remanded, admitted or removed to hospital under the Mental Health Act 1983 s 35, s 36, s 38 (see PARAS 334-336) or s 48 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1262; and **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 489, 491, 536) (Powers of Criminal Courts (Sentencing) Act 2000 s 101(11)(d)).

A person is 'in police detention' for these purposes:

- 67 (a) at any time when he is in police detention for the purposes of the Police and Criminal Evidence Act 1984 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 939) (Powers of Criminal Courts (Sentencing) Act 2000 s 101(12)(a)); and
- 68 (b) at any time when he is detained under the Terrorism Act 2000 s 41 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 420) (Powers of Criminal Courts (Sentencing) Act 2000 s 101(12)(b) (amended by the Terrorism Act 2000 Sch 15 para 20(1), (3))).

For these purposes, 'secure accommodation' has the same meaning as in the Children and Young Persons Act 1969 s 23 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1248): Powers of Criminal Courts (Sentencing) Act 2000 s 101(12).

19 le within the meaning of the Criminal Justice Act 2003 s 240A (see PARA 284).

20 Powers of Criminal Courts (Sentencing) Act 2000 s 101(8) (s 101(8), (9) amended by the Criminal Justice and Immigration Act 2008 s 22(6)).

21 le as mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 s 101(8) (see the text and notes 17-20).

22 Powers of Criminal Courts (Sentencing) Act 2000 s 101(9) (as amended: see note 20).

23 Powers of Criminal Courts (Sentencing) Act 2000 s 101(10).

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91. The period of detention and training.

An offender must serve the period of detention and training under a detention and training order¹ in such youth detention accommodation² as may be determined by the Secretary of State³. The period of detention and training under a detention and training order is⁴ one-half of the term of the order⁵: however:

- 421 (1) the Secretary of State may at any time release the offender if he is satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds⁶;
- 422 (2) the Secretary of State may release the offender either at any time during the period of one month ending with the half-way point of the term of the order (in the case of an order for a term of eight months or more but less than 18 months) or at any time during the period of two months ending with that point (in the case of an order for a term of 18 months or more)⁷; and
- 423 (3) if a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State must release the offender either one month after the half-way point of the term of the order (in the case of an order for a term of eight months or more but less than 18 months) or one month or two months after that point (in the case of an order for a term of 18 months or more)⁸.

An offender detained in pursuance of a detention and training order is deemed to be in legal custody⁹.

1 As to the making of a detention and training order see PARA 89. As to the period of detention and training see the text and note 5. As to the treatment of time spent in custody on remand see *R v Inner London Crown Court, ex p N and S* [2000] Crim LR 871, DC; *R v Fieldhouse* [2001] 1 Cr App Rep (S) 104, [2000] Crim LR 1020, CA.

2 For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 102 (see the text and notes 3-9), s 104 (see PARA 93) and s 105 (see PARA 94) 'youth detention accommodation' means, by virtue of s 107(1) (ss 102(1), (4), 101(7) amended by the Offender Management Act 2007 ss 33(1), 34(1), (2), (6), Sch 5 Pt 3):

- 69 (1) a secure training centre;
- 70 (2) a young offender institution;
- 71 (3) accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons;
- 72 (4) accommodation provided for that purpose under the Children Act 1989 s 82(5) (financial support by the Secretary of State: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 158); or
- 73 (5) such other accommodation or descriptions of accommodation as the Secretary of State may by order specify.

At the date at which this volume states the law no such order had been made.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 102(1) (as amended: see note 2).

4 ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 102(3)-(5) (see the text and notes 6-8).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 102(2). For the purposes of references in s 102, s 103 (see PARA 92), s 104 (see PARA 93) and s 105 (see PARA 94) to the 'term' of a detention and training order, consecutive terms of such orders and terms of such orders which are wholly or partly concurrent are to be treated as a single term if either the orders were made on the same occasion or, where they were made on different occasions, the offender has not been released (by virtue of s 102(2), (3), (4) or (5)) at any time during the period beginning with the first and ending with the last of those occasions: ss 101(13), 107(2).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 102(3).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 102(4) (as amended: see note 2).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 102(5).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 102(6).

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92. Period of supervision of offender subject to detention and training order.

The period of supervision of an offender who is subject to a detention and training order¹ begins with the offender's release, whether at the half-way point of the term of the order² or otherwise, and ends when the term of the order ends³. However, the Secretary of State may by order provide that the period of supervision ends at such point during the term of a detention and training order as may be specified in his order⁴.

During the period of supervision, the offender must be under the supervision of:

- 424 (1) an officer of a local probation board or an officer of a provider of probation services⁵;
- 425 (2) a social worker of a local authority⁶; or
- 426 (3) a member of a youth offending team⁷,

and the category of person to supervise the offender must be determined from time to time by the Secretary of State⁸.

The offender must be given a notice from the Secretary of State specifying the category of person for the time being responsible for his supervision and any requirements with which he must for the time being comply⁹.

1 As to the making of a detention and training order see PARA 89.

2 As to the term of a detention and training order see PARA 91 note 5.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 103(1).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 103(2). At the date at which this volume states the law no such order had been made.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 103(3)(a) (s 103(3)(a), (4) amended, s 103(4A) added, by the Criminal Justice and Court Services Act 2000 Sch 7 para 4(1), (2); and by SI 2008/912; Powers of Criminal Courts (Sentencing) Act 2000 s 103(4) further amended by SI 2005/886). As to local probation boards and providers of probation services see PARAS 733-760. Where the supervision is to be provided by an officer of a local probation board, the officer must be an officer appointed for or assigned to the local justice area within which the offender resides for the time being, and where the supervision is to be provided by an officer of a provider of probation services, the officer must be an officer acting in the local justice area within which the offender resides for the time being: Powers of Criminal Courts (Sentencing) Act 2000 s 103(4), (4A) (as so amended and added).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 103(3)(b) (s 103(3)(b), (5)(a) amended by the Children Act 2004 Sch 5 Pt 4). Where the supervision is to be provided by a social worker of a local authority or a member of a youth offending team the social worker or member must be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being: Powers of Criminal Courts (Sentencing) Act 2000 s 103(5).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 103(3)(c). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1703. See note 6.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 103(3).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 103(6). Such a notice must be given to the offender before the commencement of the period of supervision and before any alteration in the matters specified in s 103(6) comes into effect: s 103(7).

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93. Breach of supervision requirements of detention and training order.

Where a detention and training order¹ is in force in respect of an offender and it appears on information to a justice of the peace² that the offender has failed to comply with the specified requirements³, the justice:

- 427 (1) may issue a summons requiring the offender to appear at the place and time specified in the summons⁴; or
- 428 (2) if the information is in writing and on oath, may issue a warrant for the offender's arrest⁵.

If it is proved to the satisfaction of the youth court before which an offender appears or is brought⁶ that he has failed to comply with those specified requirements⁷, that court may:

- 429 (a) order the offender to be detained, in such youth detention accommodation⁸ as the Secretary of State may determine, for such period, not exceeding the shorter of three months or the remainder of the term of the detention and training order⁹, as the court may specify¹⁰; or
- 430 (b) impose on the offender a fine¹¹.

An offender may appeal to the Crown Court against any such order¹².

- 1 As to the making of a detention and training order see PARA 89.
- 2 Any summons or warrant issued under these provisions must direct the offender to appear or be brought:
 - 74 (1) before a youth court acting in the local justice area in which the offender resides (Powers of Criminal Courts (Sentencing) Act 2000 s 104(2)(a) (s 104(1) amended, s 104(2) substituted, by the Domestic Violence (Crime and Victims) Act 2004 Sch 5 para 2; Powers of Criminal Courts (Sentencing) Act 2000 s 104(2) amended by SI 2005/886)); or
 - 75 (2) if it is not known where the offender resides, before a youth court acting in the same local justice area as the justice who issued the summons or warrant (Powers of Criminal Courts (Sentencing) Act 2000 s 104(2)(b) (as so substituted and amended)).
- 3 I.e. those under the Powers of Criminal Courts (Sentencing) Act 2000 s 103(6)(b) (see PARA 92).
- 4 Powers of Criminal Courts (Sentencing) Act 2000 s 104(1)(a) (as amended: see note 2).
- 5 Powers of Criminal Courts (Sentencing) Act 2000 s 104(1)(b) (as amended: see note 2).
- 6 I.e. appears or is brought under the Powers of Criminal Courts (Sentencing) Act 2000 s 104.
- 7 See note 3.
- 8 As to the meaning of 'youth detention accommodation' see PARA 91 note 2.
- 9 As to the term of a detention and training order see PARA 91 note 5.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 104(3)(a) (amended by the Offender Management Act 2007 s 34). An offender so detained is deemed to be in legal custody: Powers of Criminal Courts (Sentencing) Act 2000 s 104(4).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 104(3)(b). The fine must not exceed level 3 on the standard scale: s 104(3)(b). As to the standard scale see PARA 142. A fine so imposed is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: s 104(5).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 104(6).

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94. Offences during currency of detention and training order.

If after the release of a person subject to a detention and training order¹ but before the date on which the term of the order² ends that person commits an offence punishable with imprisonment in the case of a person aged 21 or over³ (the 'new offence'), and, whether before or after that date, he is convicted of the new offence, the court⁴ by or before which he is convicted of the new offence may, whether or not it passes any other sentence on him, order him to be detained in such youth detention accommodation⁵ as the Secretary of State may determine for the whole or any part of the period which begins with the date of the court's order and is equal in length to the period between the date on which the new offence was committed and the date on which the term of the order ends⁶.

The period for which such a person is so ordered to be detained must, as the court may direct, either be served before and be followed by, or be served concurrently with, any sentence imposed for the new offence and in either case must be disregarded in determining the appropriate length of that sentence⁷. Where the new offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is deemed to have been committed on the last of those days⁸.

1 As to the making of a detention and training order see PARA 89.

2 As to the term of a detention and training order see PARA 91 note 5.

3 As from a day to be appointed this age limit is reduced to 18: see the Powers of Criminal Courts (Sentencing) Act 2000 s 105(1)(a) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 186). At the date at which this volume states the law no such day had been appointed. As to the determination of a person's age for these purposes see PARA 27 note 13.

4 As to the meaning of 'court' see PARA 1 note 1.

5 As to the meaning of 'youth detention accommodation' see PARA 91 note 2.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 105(1), (2) (s 105(1) prospectively amended (see note 3); s 105(2), (3) amended by the Offender Management Act 2007 s 34). This is subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 8(6): see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1259. A person so detained is deemed to be in legal custody: Powers of Criminal Courts (Sentencing) Act 2000 s 105(5).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 105(3).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 105(4).

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95. Interaction with other sentences.

Until a day to be appointed¹, where a court² passes a sentence of detention in a young offender institution³ in the case of an offender who is subject to a detention and training order⁴, the sentence takes effect as follows:

- 431 (1) if the offender has been released by virtue of the provision made for the release of such offenders⁵, at the beginning of the day on which it is passed⁶; and
- 432 (2) if not, either as mentioned in head (1) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of those specified provisions⁷.

Where at any time an offender is subject concurrently to a detention and training order and a sentence of detention in a young offender institution he is treated for the purposes of the provisions relating to place of detention⁸, return to detention⁹ and to early release¹⁰ as if he were subject only to the one of them that was imposed on the later occasion¹¹. However, this does not require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them¹².

Where, by virtue of any enactment giving a court power to deal with a person in a way in which a court on a previous occasion could have dealt with him, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person is treated as if he had been sentenced to detention in a young offender institution (or, as from a day to be appointed, imprisonment) for the same term¹³.

Where a court passes a sentence of detention¹⁴ in the case of an offender who is subject to a detention and training order, the sentence takes effect as follows:

- 433 (a) if the offender has at any time been released by virtue of the provision made for the release of such offenders¹⁵, at the beginning of the day on which the sentence is passed¹⁶; and
- 434 (b) if not, either as mentioned in head (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of those specified provisions¹⁷.

Where a court makes a detention and training order in the case of an offender who is subject to a sentence of detention, the order takes effect as follows:

- 435 (i) if the offender has at any time been released under the provisions relating to release on licence of fixed-term prisoners¹⁸, at the beginning of the day on which the order is made¹⁹; and
- 436 (ii) if not, either as mentioned in head (i), above or, if the court so orders, at the time when the offender would otherwise be released by virtue of those provisions²⁰.

Where at any time an offender is subject concurrently to a detention and training order, and to a sentence of detention, he is to be treated²¹ as if he were subject only to the sentence of

detention²². However, this does not require the offender to be released in respect of either the order or the sentence unless and until he is required to be released in respect of each of them²³.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 s 106(1) (see the text and notes 2-7) is repealed (except in relation to any order made, or having effect as if made, under s 102(1) (see PARA 91)) by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 187(a), Sch 8. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'court' see PARA 1 note 1.

3 See PARA 85.

4 See PARA 89.

5 le by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 102(2), (3), (4) or (5) (see PARA 91).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 106(1)(a) (prospectively repealed: see note 1).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 106(1)(b) (prospectively repealed: see note 1).

8 le the Powers of Criminal Courts (Sentencing) Act 2000 s 102-105 (see PARAS 91-94) and s 98 (see PARA 96) or the Criminal Justice and Court Services Act 2000 s 61 (not yet in force) (see PARA 11): Powers of Criminal Courts (Sentencing) Act 2000 s 106(4) (s 106(4), (6) prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 187(c), (d)). At the date at which this volume states the law no day had been appointed for these amendments to come into effect.

9 le the Powers of Criminal Courts (Sentencing) Act 2000 Pt V Ch IV (ss 116, 117) (see **PRISONS**).

10 le the Criminal Justice Act 1991 Pt II (ss 32-51) (see **PRISONS** vol 36(2) (Reissue) PARAS 618-627).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 106(4) (prospectively amended: see note 8).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 106(5).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 106(6) (prospectively amended: see note 8).

14 For these purposes 'sentence of detention' means (by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 106A(1) (s 106A added by the Criminal Justice Act 2003 Sch 32 paras 90, 113; Powers of Criminal Courts (Sentencing) Act 2000 s 106A(1), (8) amended by the Armed Forces Act 2006 Sch 16 para 165)):

76 (1) a sentence of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Armed Forces Act 2006 s 209 (see **ARMED FORCES**); or

77 (2) a sentence of detention under the Criminal Justice Act 2003 s 228 (see PARA 84),

and references in the Powers of Criminal Courts (Sentencing) Act 2000 s 106A to a sentence of detention under the Criminal Justice Act 2003 s 228 include such a sentence passed as a result of the Armed Forces Act 2006 s 222 (see **ARMED FORCES**).

15 See note 5.

16 Powers of Criminal Courts (Sentencing) Act 2000 s 106A(2)(a) (as added: see note 14).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 106A(2)(b) (as added: see note 14). Where an order for release in respect of a person serving a detention and training order is made by a youth court under the Powers of Criminal Courts (Sentencing) Act 2000 s 102(5) (see PARA 91) in the case of a person in respect of whom a sentence of detention is to take effect as mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 s 106A(2)(b), the order must be expressed as an order that the period of detention attributable to the detention and training order is to end at the time determined under the provisions relating to such release: s 106A(4) (as so added).

18 le under the Criminal Justice Act 2003 Pt 12 Ch 6 (ss 237-268) (see **PRISONS**).

19 Powers of Criminal Courts (Sentencing) Act 2000 s 106A(3)(a) (as added: see note 14).

20 Powers of Criminal Courts (Sentencing) Act 2000 s 106A(3)(b) (as added: see note 14). In determining for these purposes the time when an offender would otherwise be released under the Criminal Justice Act 2003 Pt 12 Ch 6, the provisions of s 246 (power of Secretary of State to release prisoners on licence before he is required to do so: see **PRISONS**) are to be disregarded: Powers of Criminal Courts (Sentencing) Act 2000 s 106A(5) (as so added). Where by virtue of these provisions a detention and training order made in the case of a person who is subject to a sentence of detention under the Criminal Justice Act 2003 s 228 (see PARA 84) is to take effect at the time when he would otherwise be released under Pt 12 Ch 6, any direction by the Parole Board under s 247(2)(b) (see **PRISONS**) in respect of him is to be expressed as a direction that the Board would, but for the detention and training order, have directed his release under s 247 (see **PRISONS**): Powers of Criminal Courts (Sentencing) Act 2000 s 106A(6) (as so added).

21 le for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 ss 92 (see PARA 78), ss 102-105 (see PARAS 91-94), the Criminal Justice Act 2003 s 235, Pt 12 Ch 6 (see **PRISONS**), and the Armed Forces Act 2006 ss 210, 214 (see **ARMED FORCES**): Powers of Criminal Courts (Sentencing) Act 2000 s 106A(8) (as added and amended: see note 14).

22 Powers of Criminal Courts (Sentencing) Act 2000 s 106A(7) (as added: see note 14).

23 Powers of Criminal Courts (Sentencing) Act 2000 s 106A(9) (as added: see note 14).

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(v) Place of Detention for Young Offenders

96. Young offenders to be detained in young offender institution or prison.

Until a day to be appointed¹, and subject to the statutory requirements relating to the removal to hospital of certain offenders², an offender sentenced to custody for life³ or detention in a young offender institution⁴ is to be detained in a young offender institution unless a direction made by the Secretary of State that he must be detained in a prison or remand centre is in force in relation to him⁵.

A person aged at least 18 but under 21 who prior to the abolition of the power to sentence a person to custody for life or detention in a young offender institutions⁶ has been given such a sentence may be detained in a young offender institution, or in a prison, determined by the Secretary of State⁷.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 ss 95, 98 (see the text and notes 2-5) are repealed by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 182, Sch 8. At the date at which this volume states the law no such day had been appointed.

2 Ie the Prison Act 1952 s 22(2)(b): see **PRISONS** vol 36(2) (Reissue) PARA 582.

3 See PARA 79 et seq.

4 See PARA 85 et seq.

5 Powers of Criminal Courts (Sentencing) Act 2000 ss 95, 98 (prospectively repealed: see note 1).

6 See the Criminal Justice and Court Services Act 2000 s 61(1) (not yet in force); and PARAS 79, 85.

7 Criminal Justice and Court Services Act 2000 s 61(3) (not yet in force). A determination of the Secretary of State under s 61 (not yet in force) may be made in respect of an individual or any description of individuals: s 61(6) (not yet in force).

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97. Conversion of sentence of detention to sentence of imprisonment.

Where an offender has been sentenced to a term of detention¹ and either he has attained the age of 21, or he has attained the age of 18 and has been reported to the Secretary of State by the independent monitoring board of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates, the Secretary of State may direct that he is to be treated as if he had been sentenced to imprisonment for the same term; and where the Secretary of State gives such a direction in relation to an offender, the portion of the term of detention imposed under the relevant sentence of detention which he has already served must be deemed to have been a portion of a term of imprisonment². Where the Secretary of State gives a direction in relation to an offender serving a sentence of detention for public protection or an extended sentence of detention³ the offender must be treated as if he had been sentenced as a person aged 18 or over⁴.

1 He is under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 (see PARA 81) or s 91 (see PARA 78), the Criminal Justice Act 2003 s 226 (sentence of detention for public protection: see PARAS 82, 83) or s 228 (extended sentence: see PARA 84), or specified service law provisions: see the Powers of Criminal Courts (Sentencing) Act 2000 s 99(5); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1407.

2 See the Powers of Criminal Courts (Sentencing) Act 2000 s 99(1), (2); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1407.

3 See note 1.

4 He is sentenced under the Criminal Justice Act 2003 s 225 (see PARAS 73, 74) or, as the case may be, s 227 (see PARA 75): see the Powers of Criminal Courts (Sentencing) Act 2000 s 99(3); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1407.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/98. Custody plus orders.

4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS

98. Custody plus orders.

As from a day to be appointed¹ it is provided that, unless the court² makes an intermittent custody order³, any power of a court to impose a sentence of imprisonment⁴ for a term of less than 12 months on an offender may be exercised only in accordance with the following provisions⁵:

- 437 (1) the term of the sentence must be expressed in weeks⁶, must be at least 28 weeks⁷, must not be more than 51 weeks in respect of any one offence⁸, and must not exceed the maximum term permitted for the offence⁹; and
- 438 (2) when passing sentence the court must specify a period (the 'custodial period'¹⁰) at the end of which the offender is to be released on a licence¹¹, and (unless the sentence is a suspended sentence¹²) by order require the licence to be granted subject to conditions requiring the offender's compliance during the remainder of the term (the 'licence period'¹³) or any part of it with one or more licence requirements¹⁴ specified in the order¹⁵.

Such an order¹⁶ is known as a 'custody plus order'¹⁷.

1 At the date at which this volume states the law no day had been appointed for the commencement of these provisions.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the making of intermittent custody orders see the Criminal Justice Act 2003 s 183; and PARA 100.

4 As to the meaning of 'sentence of imprisonment' generally see PARA 30 note 5. For the purposes of the Criminal Justice Act 2003 Pt 12 Ch 3 (ss 181-195), until a day to be appointed 'sentence of imprisonment' does not include a committal for contempt of court or any kindred offence, and as from that day does not include a sentence of imprisonment passed in respect of a summary conviction for an offence under the Bail Act 1976 s 6(1) or (2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1199): Criminal Justice Act 2003 s 195 (prospectively amended by the Police and Justice Act 2006 s 34(1), (2)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

5 Criminal Justice Act 2003 s 181(1) (not yet in force).

6 Criminal Justice Act 2003 s 181(2)(a) (not yet in force).

7 Criminal Justice Act 2003 s 181(2)(b) (not yet in force).

8 Criminal Justice Act 2003 s 181(2)(c) (not yet in force).

9 Criminal Justice Act 2003 s 181(2)(d) (not yet in force).

10 As to the custodial period see PARA 99.

11 Criminal Justice Act 2003 s 181(3)(a) (not yet in force).

12 Criminal Justice Act 2003 s 181(9) (not yet in force). As to suspended sentences see PARA 110 et seq.

13 As to the licence period see PARA 99.

14 As to the licence requirements see PARA 99.

15 Criminal Justice Act 2003 s 181(3)(b) (not yet in force). The power under s 181(3)(b) to determine the conditions of the licence has effect subject to s 218 (availability of arrangements in local area: see PARA 271), s 199(3) (particular provision as to imposition of unpaid work requirement: see PARA 271), s 201(3), (4) (particular provision as to imposition of activity requirement: see PARA 272), s 202(4), (5) (particular provision as to imposition of programme requirement: see PARA 273) and s 203(2) (particular provision as to imposition of prohibited activity requirement: see PARA 274): s 182(2)(a)-(d). A custody plus order must specify the local justice area in which the offender will reside during the licence period as defined by s 181(3)(b): s 216(2)(a) (not yet in force; amended by SI 2005/886). Where an order specifies a local justice area in which the court making the order does not act, the court making the order must provide to the magistrates' court acting in that area a copy of the order and documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Criminal Justice Act 2003 s 219(3) (amended by SI 2005/886).

16 Is an order under the Criminal Justice Act 2003 s 181(3)(b).

17 Criminal Justice Act 2003 s 181(4) (not yet in force). The court by which a custody plus order is made must forthwith provide copies of the order:

78 (1) to the offender (Criminal Justice Act 2003 s 219(1)(a));

79 (2) if the offender is aged 18 or over, to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court (s 219(1)(b) (amended by SI 2008/912));

80 (3) if the offender is aged 16 or 17, to an officer of a local probation board assigned to the court, an officer of a provider of probation services acting at the court or a member of a youth offending team assigned to the court (Criminal Justice Act 2003 s 219(1)(c) (amended by SI 2008/912)); and

81 (4) where the order specifies a local justice area in which the court making the order does not act, to the local probation board acting for that area or, as the case may be, a provider of probation services acting in that area (Criminal Justice Act 2003 s 219(1)(d) (amended by SI 2005/886; SI 2008/912)).

Provision is also made as to the provision of copies to the persons concerned with the supervision of requirements imposed by an order: see the Criminal Justice Act 2003 s 219(2), Sch 14; and PARA 277. See also s 219(3); and note 15.

For these purposes, a 'local probation board' is a local probation board established under the Criminal Justice and Court Services Act 2000 s 4 and a 'youth offending team' is a team established under the Crime and Disorder Act 1998 s 39: Criminal Justice Act 2003 s 305(1). As to local probation boards and providers of probation services see PARAS 733-760. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/99. Custodial period, licence period and licence requirements for custody plus orders.

99. Custodial period, licence period and licence requirements for custody plus orders.

It is provided¹ that where a custody plus order is made², the custodial period must be at least two weeks and in respect of any one offence must not be more than 13 weeks³. In determining the term of the sentence and the length of the custodial period, the court must ensure that the licence period is at least 26 weeks in length⁴. Where a court imposes two or more terms of imprisonment in accordance with these provisions to be served consecutively, the aggregate length of the terms of imprisonment must not be more than 65 weeks⁵ and the aggregate length of the custodial periods must not be more than 26 weeks⁶.

The licence requirements which may be specified in a custody plus order are:

- 439 (1) an unpaid work requirement⁷;
- 440 (2) an activity requirement⁸;
- 441 (3) a programme requirement⁹;
- 442 (4) a prohibited activity requirement¹⁰;
- 443 (5) a curfew requirement¹¹;
- 444 (6) an exclusion requirement¹²;
- 445 (7) a supervision requirement¹³; and
- 446 (8) in a case where the offender is aged under 25¹⁴, an attendance centre requirement¹⁵.

A custody plus order which specifies two or more licence requirements may, in relation to any requirement, refer to compliance within such part of the licence period as is specified in the order¹⁶. Where the court makes a custody plus order requiring a licence to contain a curfew requirement or an exclusion requirement, the court must also require the licence to contain an electronic monitoring requirement¹⁷ unless either it is prevented from doing so¹⁸ or, in the particular circumstances of the case, it considers it inappropriate to do so¹⁹, and where the court makes a custody plus order requiring a licence to contain an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a supervision requirement or an attendance centre requirement, the court may also require the licence to contain an electronic monitoring requirement unless the court is so prevented²⁰ from doing so²¹. Before making a custody plus order requiring a licence to contain two or more different licence requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other²².

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 s 182(1), (3)-(5) were in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 See PARA 98.

3 Criminal Justice Act 2003 s 181(5) (not yet in force).

4 Criminal Justice Act 2003 s 181(6) (not yet in force). As to the meaning of 'court' see PARA 1 note 1.

- 5 Criminal Justice Act 2003 s 181(7)(a) (not yet in force). For this purpose the aggregate length of the terms of imprisonment is not to be regarded as being more than 65 weeks if the aggregate of all the custodial periods and the longest of the licence periods in relation to those terms is not more than 65 weeks: s 181(7A) (added by the Criminal Justice and Immigration Act 2008 s 20(1), (2)).
- 6 Criminal Justice Act 2003 s 181(7)(b) (not yet in force).
- 7 Criminal Justice Act 2003 s 182(1)(a) (partially in force: see note 1). See s 199; and PARA 271.
- 8 Criminal Justice Act 2003 s 182(1)(b) (partially in force: see note 1). See s 201; and PARA 272.
- 9 Criminal Justice Act 2003 s 182(1)(c) (partially in force: see note 1). See s 202; and PARA 273.
- 10 Criminal Justice Act 2003 s 182(1)(d) (partially in force: see note 1). See s 203; and PARA 274.
- 11 Criminal Justice Act 2003 s 182(1)(e) (partially in force: see note 1). See s 204; and PARA 275.
- 12 Criminal Justice Act 2003 s 182(1)(f) (partially in force: see note 1). See s 205; and PARA 276.
- 13 Criminal Justice Act 2003 s 182(1)(g) (partially in force: see note 1). See s 213; and PARA 282.
- 14 As to the determination of a person's age for these purposes see PARA 27 note 13.
- 15 Criminal Justice Act 2003 s 182(1)(h) (partially in force: see note 1). See s 214; and PARA 283.
- 16 Criminal Justice Act 2003 s 181(8) (not yet in force).
- 17 le as defined by the Criminal Justice Act 2003 s 215 (see PARA 284).
- 18 le by the Criminal Justice Act 2003 s 215(2) (see PARA 284) or s 218(4) (see PARA 284).
- 19 Criminal Justice Act 2003 s 182(3) (partially in force: see note 1).
- 20 See note 18.
- 21 Criminal Justice Act 2003 s 182(4) (partially in force: see note 1).
- 22 Criminal Justice Act 2003 s 182(5) (partially in force: see note 1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/100. Intermittent custody orders.

100. Intermittent custody orders.

It is provided¹ that when a court² passes a sentence of imprisonment³ whose term:

- 447 (1) is expressed in weeks⁴;
- 448 (2) is at least 28 weeks (or 14 weeks if passed by a magistrates' court)⁵;
- 449 (3) is not more than 51 weeks (or 26 weeks if passed by a magistrates' court) in respect of any one offence⁶; and
- 450 (4) does not exceed the maximum term permitted for the offence⁷,

the court may:

- 451 (a) specify the number of days (known as the 'number of custodial days'⁸) that the offender must serve in prison under the sentence before being released on licence for the remainder of the term⁹; and
- 452 (b) by order specify licence periods¹⁰ during which the offender is to be released temporarily on licence before he has served that number of days in prison¹¹ and require any licence to be granted subject to conditions requiring the offender's compliance during the licence periods with one or more licence requirements specified in the order¹².

Such an order is known as an 'intermittent custody order'¹³.

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 ss 183(1)-(4), 216(2) were in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the meaning of 'sentence of imprisonment' see PARA 98 note 4.

4 Criminal Justice Act 2003 s 183(4)(a) (partially in force: see note 1).

5 Criminal Justice Act 2003 s 183(4)(b) (partially in force: see note 1); Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2(a). The modification for sentences passed by magistrates' courts applies in relation to any time before the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) comes into force: Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2.

6 Criminal Justice Act 2003 s 183(4)(c) (partially in force: see note 1); Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2(b). As to the modification for sentences passed by magistrates' courts see note 5.

7 Criminal Justice Act 2003 s 183(4)(d) (partially in force: see note 1).

8 Criminal Justice Act 2003 s 183(3) (partially in force: see note 1).

9 Criminal Justice Act 2003 s 183(1)(a) (partially in force: see note 1).

10 'Licence period', in relation to a term of imprisonment to which an intermittent custody order relates, means any period during which the offender is released on licence by virtue of the Criminal Justice Act 2003 s 183(1)(a) (see the text and note 9) or s 183(1)(b)(i) (see the text and note 11): s 183(3) (partially in force: see note 1). An intermittent custody order must specify the local justice area in which the offender will reside during the licence period as defined by s 183(3): s 216(2)(b) (partially in force (see note 1); amended by SI 2005/886). Where an order specifies a local justice area in which the court making the order does not act, the court making the order must provide to the magistrates' court acting in that area a copy of the order and documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Criminal Justice Act 2003 s 219(3) (amended by SI 2005/886).

11 Criminal Justice Act 2003 s 183(1)(b)(i). The Secretary of State may by order require a court, in specifying licence periods under s 183(1)(b)(i), to specify only periods of a prescribed duration, periods beginning or ending at prescribed times or periods including, or not including, specified parts of the week: s 183(8). At the date at which this volume states the law no such orders had been made.

12 Criminal Justice Act 2003 s 183(1)(b)(ii).

13 Criminal Justice Act 2003 s 183(2). The court by which an intermittent custody order is made must forthwith provide copies of the order:

- 82 (1) to the offender (Criminal Justice Act 2003 s 219(1)(a));
- 83 (2) if the offender is aged 18 or over, to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court (s 219(1)(b) (amended by SI 2008/912));
- 84 (3) if the offender is aged 16 or 17, to an officer of a local probation board assigned to the court, an officer of a provider of probation services acting at the court or a member of a youth offending team assigned to the court (Criminal Justice Act 2003 s 219(1)(c) (amended by SI 2008/912)); and
- 85 (4) where the order specifies a local justice area in which the court making the order does not act, to the local probation board acting for that area or, as the case may be, a provider of probation services acting in that area (Criminal Justice Act 2003 s 219(1)(d) (amended by SI 2005/886; SI 2008/912)).

Provision is also made as to the provision of copies to the persons concerned with the supervision of requirements imposed by an order: see the Criminal Justice Act 2003 s 219(2), Sch 14; and PARA 277. See also s 219(3); and note 10. As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/101. Custodial days and licence requirements for intermittent custody orders.

101. Custodial days and licence requirements for intermittent custody orders.

It is provided¹ that the number of custodial days which may be specified for the purposes of an intermittent custody order² must be at least 14³ and, in respect of any one offence, must not be more than 90 (or 45 if the order is made by a magistrates' court)⁴. The licence requirements are the same as those applicable to custody plus orders⁵. Where the court makes an intermittent custody order requiring a licence to contain a curfew requirement or an exclusion requirement, the court must also require the licence to contain an electronic monitoring requirement⁶ unless either it is prevented from doing so⁷ or, in the particular circumstances of the case, it considers it inappropriate to do so⁸, and where the court makes an intermittent custody order requiring a licence to contain an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a supervision requirement or an attendance centre requirement, the court may also require the licence to contain an electronic monitoring requirement unless the court is so prevented⁹ from doing so¹⁰. Before making an intermittent custody order requiring a licence to contain two or more different licence requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other¹¹.

An intermittent custody order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such licence period or periods, or part of a licence period, as is specified in the order¹².

A court may not exercise its power to make an intermittent custody order¹³ unless the offender has expressed his willingness to serve the custodial part of the proposed sentence intermittently, during the parts of the sentence that are not to be licence periods¹⁴.

Where a court exercises its power to make an intermittent custody order in respect of two or more terms of imprisonment that are to be served consecutively the aggregate length of the terms of imprisonment must not be more than 65 weeks (or 52 weeks if passed by a magistrates' court)¹⁵ and the aggregate of the numbers of custodial days must not be more than 180 (or 90 if passed by a magistrates' court)¹⁶.

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 ss 182(3)-(5), 183(1)-(7), (9), 185 were in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 See PARA 100.

3 Criminal Justice Act 2003 s 183(5)(a) (partially in force: see note 1).

4 Criminal Justice Act 2003 s 183(5)(b) (partially in force: see note 1); Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2(c). The modification for sentences passed by magistrates' courts applies in relation to any time before the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) comes into force: Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2.

5 Criminal Justice Act 2003 s 183(1)(b)(ii) (partially in force: see note 1). As to the licence requirements applicable to custody plus orders see PARA 99. Section 183(1)(b) has effect subject to s 218 (availability of arrangements in local area: see PARA 271), s 199(3) (particular provision as to imposition of unpaid work requirement: see PARA 271), s 201(3), (4) (particular provision as to imposition of activity requirement: see PARA 272), s 202(4), (5) (particular provision as to imposition of programme requirement: see PARA 273), and s 203(2)

(particular provision as to imposition of prohibited activity requirement: see PARA 274): s 185(1)(a)-(d). As to the determination of a person's age see PARA 27.

6 le as defined by the Criminal Justice Act 2003 s 215 (see PARA 284).

7 le by the Criminal Justice Act 2003 s 215(2) (see PARA 284) or s 218(4) (see PARA 284).

8 Criminal Justice Act 2003 ss 182(3), 185(2) (partially in force: see note 1).

9 See note 7.

10 Criminal Justice Act 2003 s 182(4) (partially in force: see note 1). As to the meaning of 'court' see PARA 1 note 1.

11 Criminal Justice Act 2003 s 182(5) (partially in force: see note 1).

12 Criminal Justice Act 2003 s 183(9) (partially in force: see note 1).

13 le its powers under the Criminal Justice Act 2003 s 183(1) (see PARA 100).

14 Criminal Justice Act 2003 s 183(6) (partially in force: see note 1).

15 Criminal Justice Act 2003 s 183(7)(a) (partially in force: see note 1); Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2(d). See note 4.

16 Criminal Justice Act 2003 s 183(7)(b) (partially in force: see note 1); Intermittent Custody (Transitory Provisions) Order 2003, SI 2003/3283, art 2(e). See note 4.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/102. Restrictions on power to make intermittent custody order.

102. Restrictions on power to make intermittent custody order.

It is provided¹ that a court² may not make an intermittent custody order³ unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the order and the notice has not been withdrawn⁴, and a court may not make an intermittent custody order in respect of any offender unless:

- 453 (1) it has consulted an officer of a local probation board or an officer of a provider of probation services⁵;
- 454 (2) it has received from the Secretary of State notification that suitable prison accommodation is available for the offender during the custodial periods⁶; and
- 455 (3) it appears to the court that the offender will have suitable accommodation available to him during the licence periods⁷.

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 s 184 was in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and was not in force for any other purpose.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the meaning of 'intermittent custody order' see PARA 100.

4 Criminal Justice Act 2003 s 184(1) (partially in force: see note 1).

5 Criminal Justice Act 2003 s 184(2)(a) (partially in force (see note 1); amended by SI 2008/912). As to local probation boards and providers of probation services see PARAS 733-760.

6 Criminal Justice Act 2003 s 184(2)(b) (partially in force: see note 1). 'Custodial period', in relation to a sentence to which an intermittent custody order relates, means any part of the sentence that is not a licence period: s 184(3) (partially in force: see note 1). As to the meaning of 'licence period' see PARA 100 note 10.

7 Criminal Justice Act 2003 s 184(2)(c) (partially in force: see note 1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/103. Requirement to avoid conflict with religious beliefs and education.

103. Requirement to avoid conflict with religious beliefs and education.

The court must ensure, as far as practicable, that any requirement imposed by a custody plus order¹ or an intermittent custody order² is such as to avoid:

- 456 (1) any conflict with the offender's religious beliefs or with the requirements of any other relevant order³ to which he may be subject⁴; and
- 457 (2) any interference with the times, if any, at which he normally works or attends any educational establishment⁵.

1 As to the meaning of 'custody plus order' see PARA 98.

2 As to the meaning of 'intermittent custody order' see PARA 100.

3 I.e. a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110 et seq, 168 et seq.

4 Criminal Justice Act 2003 s 217(1)(a). The Secretary of State may by order provide that the Criminal Justice Act 2003 s 217(1) is to have effect with such additional restrictions as may be specified in the order: s 217(3). At the date at which this volume states the law no such order had been made.

5 Criminal Justice Act 2003 s 217(1)(b) (amended by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 91).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/104. Revocation of custody plus orders or removal from intermittent custody order of requirements as to licence conditions.

104. Revocation of custody plus orders or removal from intermittent custody order of requirements as to licence conditions.

It is provided¹ that where, at any time while a custody plus order² or intermittent custody order³ is in force, it appears to the appropriate court⁴ on the application⁵ of the offender⁶ or the responsible officer⁷ that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may:

- 458 (1) in the case of a custody plus order, revoke the order⁸; and
- 459 (2) in the case of an intermittent custody order, amend the order so that it contains only provision specifying periods during which the offender is to be released temporarily on licence before he has served that number of days in prison⁹.

The revocation of a custody plus order does not affect the sentence of imprisonment¹⁰ to which the order relates, except in relation to the conditions of the licence¹¹.

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 Sch 10 was in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 As to the meaning of 'custody plus order' see PARA 98.

3 As to the meaning of 'intermittent custody order' see PARA 100.

4 For these purposes, 'appropriate court' means either the Crown Court (where a custody plus order or intermittent custody order was made by the Crown Court) or a magistrates' court acting in the local justice area concerned (in any other case): Criminal Justice Act 2003 Sch 10 para 1(1) (partially in force (see note 1); Sch 10 paras 1(1), 9(1), (2) amended by SI 2005/886). As to the meaning of 'court' see further PARA 1 note 1. 'Local justice area concerned', in relation to a custody plus order or intermittent custody order, means the local justice area for the time being specified in the order: Criminal Justice Act 2003 Sch 10 para 1(1) (partially in force (see note 1); as so amended). Where a custody plus order or intermittent custody order has been made on appeal, it is to be taken for these purposes to have been made by the Crown Court: Sch 10 para 2 (partially in force: see note 1).

Where Sch 11 Pt 4 (paras 14-22) (provisions relating to custody plus orders made or amended, and intermittent custody orders amended, in connection with offenders residing in Scotland or Northern Ireland: see PARA 109) applies, and the order in question specified a local authority area in Scotland or a petty sessions district in Northern Ireland, any reference in Sch 10 to the local justice area concerned has effect as a reference to that local authority area or petty sessions district (as the case may be), and any other reference to a local justice area has effect as a reference to a local authority area or petty sessions district (as the case may be): Sch 11 para 16(1), (4), (5) (not yet in force; amended by SI 2005/886). Where the Criminal Justice Act 2003 Sch 11 Pt 4 applies, any reference in Sch 10 to the 'appropriate court' has effect as a reference to the original court: Sch 11 para 16(3) (not yet in force). As to the meaning of 'original court' for those purposes see PARA 109 note 9.

5 No application may be made under the Criminal Justice Act 2003 Sch 10 para 3(1) while an appeal against the sentence of which the custody plus or intermittent custody order forms part is pending: Sch 10 para 7 (partially in force: see note 1).

6 In relation to a custody plus order or intermittent custody order, 'offender' means the person in respect of whom the order is made: Criminal Justice Act 2003 Sch 10 para 1(1) (partially in force: see note 1).

7 For the purposes of the Criminal Justice Act 2003 Pt 12 (ss 142-305) the 'responsible officer' in relation to an offender to whom a relevant order (ie a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110 et seq, 168 et seq) relates, means:

- 86 (1) in a case where the order imposes a curfew requirement (see PARA 275) or an exclusion requirement (see PARA 276) but no other requirement mentioned in s 177(1) (see PARA 171) or, as the case requires, s 182(1) (see PARA 99) or s 190(1) (see PARA 112), and imposes an electronic monitoring requirement (see PARA 284), the person who under s 215(3) (see PARA 284) is responsible for the electronic monitoring required by the order (s 197(1)(a), Sch 10 para 1(1));
- 87 (2) in a case where the only requirement imposed by the order is an attendance centre requirement (see PARA 283), the officer in charge of the attendance centre in question (s 197(1)(b) (amended by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 83, Sch 28 Pt 1)); and
- 88 (3) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by the Criminal Justice Act 2003 Pt 12 on the responsible officer (s 197(1)(c)).

The following are 'qualifying officers' for the purposes of s 179(1)(c):

- 89 (a) in a case where the offender is aged under 18 at the time when the relevant order is made, an officer of a local probation board appointed for or assigned to the local justice area for the time being specified in the order or (as the case may be) an officer of a provider of probation services acting in the local justice area for the time being specified in the order, and a member of a youth offending team established by a local authority for the time being specified in the order (s 197(2)(a) (s 179(2)(a) substituted, s 179(2)(b) amended, by SI 2008/912)); and
- 90 (b) in any other case, an officer of a local probation board appointed for or assigned to the local justice area for the time being specified in the order or (as the case may be) an officer of a provider of probation services acting in the local justice area for the time being specified in the order (Criminal Justice Act 2003 s 179(2)(b) (as so amended; amended by SI 2005/886)).

The Secretary of State may by order amend the Criminal Justice Act 2003 s 197(1), (2) and make any other amendments of Pt 12 that appear to him to be necessary or expedient in consequence of any amendment made by virtue of an amendment of s 179(1), (2): s 197(3). Such an order may, in particular, provide for the court to determine which of two or more descriptions of 'responsible officer' is to apply in relation to any relevant order: s 197(4). At the date at which this volume states the law no such order had been made.

The definition of 'responsible officer' for these purposes is modified in relation to the transfer of custody plus orders, intermittent custody orders and suspended sentence orders to Scotland or Northern Ireland (as to which see PARAS 108-109, 130-131): see Sch 9 paras 4(1), (2), 7, Sch 11 paras 7(1), (2), 13(1), (2), Sch 13 paras 4(1), (2), 9(1), (2).

Where a relevant order has effect, it is the duty of the responsible officer:

- 91 (i) to make any arrangements that are necessary in connection with the requirements imposed by the order (s 198(1)(a));
- 92 (ii) to promote the offender's compliance with those requirements (s 198(1)(b)); and
- 93 (iii) where appropriate, to take steps to enforce those requirements (s 198(1)(c)).

In s 198, 'responsible officer' does not include a person falling within s 197(1)(a): s 198(2).

Where Sch 11 Pt 4 (see PARA 109) applies, any reference in Sch 10 to the 'responsible officer' has effect as a reference to the relevant officer: Sch 11 para 16(2) (not yet in force). As to the meaning of 'relevant officer' for those purposes see PARA 109 note 17.

The responsible officer in relation to an offender to whom a relevant order (ie a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110 et seq, 168 et seq) relates must ensure, as far as practicable, that any instruction given or requirement imposed by him in pursuance of the order is such as to avoid any conflict with the offender's religious beliefs or with the requirements of any other relevant order to which he may be subject (s 217(1)(a), (2)) and any interference with the times, if any, at which he normally works or attends any educational establishment (s 217(1)(b) (amended by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 91)). The Secretary of State may by order provide that the Criminal Justice Act 2003 s 217(2) is to have effect with such additional restrictions as may be specified in the order: s 217(3). At the date at which this volume states the law no such order had been made.

8 Criminal Justice Act 2003 Sch 10 para 3(1)(a) (partially in force: see note 1). On the making of an order revoking or amending a custody plus order or amending an intermittent custody order, the proper officer of the court must: (1) provide copies of the revoking or amending order to the offender and the responsible officer (Sch 10 para 9(1)(a) (partially in force: see note 1)); (2) in the case of an amending order which substitutes a new local justice area or (as the case may be) a provider of probation services operating in that area, provide a copy of the amending order to the local probation board acting for that area (Sch 10 para 9(1)(b)(i) (partially in force (see note 1); as amended (see note 4); and further amended by SI 2008/912)) and to the magistrates' court acting in that area (Sch 10 para 9(1)(b)(ii) (partially in force (see note 1); as so amended)); and (3) in the case of an order which cancels or amends a requirement specified in Sch 14 (first column) (see PARA 272 et seq), provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in Sch 14 (second column) (Sch 10 para 9(1)(c) (partially in force: see note 1)). As to local probation boards and providers of probation services see PARAS 733-760. Where the proper officer so provides a copy of an amending order to a magistrates' court acting in a different area, he must also provide to that court documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Sch 10 para 9(2) (partially in force (see note 1); as so amended).

Sch 10 para 9 does not apply where Sch 11 Pt 4 (see PARA 109) applies: Sch 11 para 16(6) (not yet in force).

9 Criminal Justice Act 2003 Sch 10 para 3(1)(b) (partially in force: see note 1). The periods referred to in the text are periods for the purposes of s 183(1)(b)(i) (see PARA 100): Sch 10 para 3(1)(b) (partially in force: see note 1).

10 As to the meaning of 'sentence of imprisonment' see PARAS 30 note 5, 98 note 4.

11 Criminal Justice Act 2003 Sch 10 para 3(2) (partially in force: see note 1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/105. Amendment by reason of change of residence.

105. Amendment by reason of change of residence.

It is provided¹ that where, at any time during the term of imprisonment to which a custody plus order² or intermittent custody order³ relates, the appropriate court⁴ is satisfied that the offender⁵ proposes to change, or has changed, his residence during the licence period⁶ from the local justice area concerned⁷ to another local justice area⁸, the appropriate court may, and on the application of the Secretary of State or the responsible officer⁹ must, amend the order by substituting the other local justice area for the area specified in the order¹⁰. However, the court may not amend an order which contains requirements¹¹ which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area concerned unless¹² it either cancels those requirements¹³ or substitutes for those requirements other requirements which can be complied with if the offender does not reside in that area¹⁴. The court may not amend an order imposing a programme requirement¹⁵ unless it appears to the court that the accredited programme specified in the requirement is available in the other local justice area¹⁶.

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 Sch 10 was in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 As to the meaning of 'custody plus order' see PARA 98.

3 As to the meaning of 'intermittent custody order' see PARA 100.

4 As to the meaning of 'appropriate court' see PARA 104 note 4.

5 As to the meaning of 'offender' see PARA 104 note 6.

6 As to the meaning of 'licence period' in relation to custody plus orders see PARA 98; and as to the meaning of 'licence period' in relation to intermittent custody orders see PARA 100 note 10.

7 As to the meaning of 'local justice area concerned' see PARA 104 note 4. As to the modification of references to local justice areas in connection with custody plus orders made or amended, and intermittent custody orders amended, in connection with offenders residing in Scotland or Northern Ireland see PARA 104 note 4; and see also PARAS 108-109.

8 Criminal Justice Act 2003 Sch 10 para 4(1) (partially in force (see note 1); Sch 10 para 4 amended by SI 2005/886).

9 As to the meaning of 'responsible officer' see PARA 104 note 7.

10 Criminal Justice Act 2003 Sch 10 para 4(2) (partially in force (see note 1); as amended (see note 8)). For procedural provisions as to the making of an order revoking or amending a custody plus order or amending an intermittent custody order see PARA 104 note 8.

11 For the purposes of the Criminal Justice Act 2003 Sch 10 any reference to a requirement being imposed by, or included in, a custody plus order or intermittent custody order is to be read as a reference to compliance with the requirement being required by the order to be a condition of a licence: Sch 10 para 1(2) (partially in force: see note 1).

12 Ie in accordance with the Criminal Justice Act 2003 Sch 10 para 5 (see PARA 106).

13 Criminal Justice Act 2003 Sch 10 para 4(3)(a) (partially in force (see note 1); as amended (see note 7)).

- 14 Criminal Justice Act 2003 Sch 10 para 4(3)(b) (partially in force (see note 1); as amended (see note 8)).
- 15 As to programme requirements see the Criminal Justice Act 2003 s 202; and PARA 273.
- 16 Criminal Justice Act 2003 Sch 10 para 4(4) (partially in force (see note 1); as amended (see note 8)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/106. Amendment of requirements of custody plus order or intermittent custody order.

106. Amendment of requirements of custody plus order or intermittent custody order.

It is provided¹ that at any time during the term of imprisonment to which a custody plus order² or intermittent custody order³ relates, the appropriate court⁴ may, on the application⁵ of the offender⁶, the Secretary of State or the responsible officer⁷, by order amend any requirement⁸ of the order either by cancelling the requirement⁹ or by replacing it with a requirement of the same kind¹⁰ imposing different obligations, which the court could include if it were then making the order¹¹.

Where a court proposes to exercise these powers (other than in relation to an order cancelling any requirement of a custody plus order or intermittent custody order¹², and otherwise than on the application of the offender), it must summon the offender to appear before the court¹³, and if he does not appear in answer to the summons it may issue a warrant for his arrest¹⁴.

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 Sch 10 was in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 As to the meaning of 'custody plus order' see PARA 98.

3 As to the meaning of 'intermittent custody order' see PARA 100.

4 As to the meaning of 'appropriate court' see PARA 104 note 4.

5 No application may be made under the Criminal Justice Act 2003 Sch 10 para 5(1) while an appeal against the sentence of which the custody plus or intermittent custody order forms part is pending: Sch 10 para 7 (partially in force: see note 1).

6 As to the meaning of 'offender' see PARA 104 note 6.

7 As to the meaning of 'responsible officer' see PARA 104 note 7.

8 As to the meaning of 'requirements' of an order see PARA 105 note 11.

9 Criminal Justice Act 2003 Sch 10 para 5(1)(a) (partially in force: see note 1).

10 For these purposes any requirement falling within the Criminal Justice Act 2003 s 182(1) (see PARA 99) is of the same kind as any other requirement falling within that provision (Sch 10 para 5(2)(a) (partially in force: see note 1)) and an electronic monitoring requirement is a requirement of the same kind as any requirement falling within s 182(1) to which it relates (Sch 10 para 5(2)(b) (partially in force: see note 1)).

11 Criminal Justice Act 2003 Sch 10 para 5(1)(b) (partially in force: see note 1). This provision has effect subject to the provisions mentioned in s 182(2)-(5) (see PARAS 98, 99, 101): Sch 10 para 5(3) (partially in force: see note 1). For procedural provisions as to the making of an order revoking or amending a custody plus order or amending an intermittent custody order see PARA 104 note 8.

12 Criminal Justice Act 2003 Sch 10 para 8(2) (partially in force: see note 1). Schedule 10 para 8 does not apply to the home court (see PARA 109 note 7) where Sch 11 Pt 4 (paras 14-22) (provisions relating to custody plus orders made or amended, and intermittent custody orders amended, in connection with offenders residing in Scotland or Northern Ireland: see PARA 109) applies and the home court proposes to exercise the power conferred by Sch 10 para 5 (see the text and notes 1-11) otherwise than on the application of the offender: Sch 11 para 17(2) (not yet in force).

- 13 Criminal Justice Act 2003 Sch 10 para 8(1)(a) (partially in force: see note 1).
- 14 Criminal Justice Act 2003 Sch 10 para 8(1)(b) (partially in force: see note 1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/107. Alteration of pattern of temporary release under intermittent custody order.

107. Alteration of pattern of temporary release under intermittent custody order.

It is provided¹ that at any time during the term of imprisonment to which an intermittent custody order² relates, the appropriate court³ may, on the application⁴ of the offender⁵, the Secretary of State or the responsible officer⁶, amend the order either so as to specify different licence periods⁷ or so as to provide that he is to remain in prison until the number of days served by him in prison is equal to the number of custodial days⁸. The appropriate court may not, however, by virtue of these provisions amend an intermittent custody order unless it has received from the Secretary of State notification that suitable prison accommodation is available for the offender during the periods which, under the order as amended, will be custodial periods⁹.

Where a court proposes to exercise these powers (other than in relation to an order cancelling any requirement of a custody plus order or intermittent custody order¹⁰, otherwise than on the application of the offender) it must summon the offender to appear before the court¹¹, and if he does not appear in answer to the summons it may issue a warrant for his arrest¹².

1 At the date at which this volume states the law the provisions set out in this paragraph had been brought into force only to a limited extent (ie the Criminal Justice Act 2003 Sch 10 was in force for the purposes of the passing of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence: see the Criminal Justice Act 2003 (Commencement No 1) Order 2003, SI 2003/3282, art 2, Schedule) and were not in force for any other purpose.

2 As to the meaning of 'intermittent custody order' see PARA 100.

3 As to the meaning of 'appropriate court' see PARA 104 note 4.

4 No application may be made under the Criminal Justice Act 2003 Sch 10 para 6(1) while an appeal against the sentence of which the custody plus or intermittent custody order forms part is pending: Sch 10 para 7 (partially in force: see note 1).

5 As to the meaning of 'offender' see PARA 104 note 6.

6 As to the meaning of 'responsible officer' see PARA 104 note 7.

7 Criminal Justice Act 2003 Sch 10 para 6(1)(a) (partially in force: see note 1). As to the meaning of 'licence period' see PARA 100 note 10. For procedural provisions as to the making of an order amending an intermittent custody order see PARA 104 note 8.

8 Criminal Justice Act 2003 Sch 10 para 6(1)(b) (partially in force: see note 1).

9 Criminal Justice Act 2003 Sch 10 para 6(2) (partially in force: see note 1). As to the meaning of 'custodial period' for these purposes see PARA 102 note 6 (definition applied by Sch 10 para 6(3) (partially in force: see note 1)).

10 Criminal Justice Act 2003 Sch 10 para 8(2) (partially in force: see note 1). Schedule 10 para 8 does not apply to the home court (see PARA 109 note 7) where Sch 11 Pt 4 (paras 14-22) (provisions relating to custody plus orders made or amended, and intermittent custody orders amended, in connection with offenders residing in Scotland or Northern Ireland: see PARA 109) applies and the home court proposes to exercise the power conferred by Sch 10 para 5 (see the text and notes 1-11) otherwise than on the application of the offender: Sch 11 para 17(2) (not yet in force).

11 Criminal Justice Act 2003 Sch 10 para 8(1)(a) (partially in force: see note 1).

12 Criminal Justice Act 2003 Sch 10 para 8(1)(b) (partially in force: see note 1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/108. Powers to transfer custody plus orders and intermittent custody orders to Scotland or Northern Ireland.

108. Powers to transfer custody plus orders and intermittent custody orders to Scotland or Northern Ireland.

As from a day to be appointed¹, where the court² making a custody plus order³ is satisfied that the offender resides in Scotland or Northern Ireland, or will reside there during the licence period⁴, it may impose requirements⁵ that are to be complied with in Scotland or Northern Ireland and require the offender's compliance with the order to be supervised in accordance with arrangements made by the local authority⁶ in Scotland in whose area he resides or will reside or by the Probation Board for Northern Ireland, as the case may be⁷.

However, the court may not so make an order unless it appears to the court that suitable arrangements for supervising his compliance with the order can be made by the local authority in Scotland in whose area he resides, or will be residing during the licence period, or by the Probation Board for Northern Ireland, as the case may be⁸, and that in the case of an order imposing:

- 460 (1) an unpaid work requirement⁹;
- 461 (2) an activity requirement¹⁰;
- 462 (3) a programme requirement¹¹;
- 463 (4) (in Northern Ireland) an attendance centre requirement¹²; or
- 464 (5) an electronic monitoring requirement¹³,

arrangements exist for persons to comply with such a requirement in the locality in Scotland or petty sessions district in Northern Ireland, as the case may be, in which the offender resides, or will be residing during the licence period, and that provision can be made for him to comply with the requirement under those arrangements¹⁴.

Where:

- 465 (a) the appropriate court for the purposes of its powers of amendment by reason of change of residence¹⁵ is satisfied that an offender in respect of whom a custody plus order or intermittent custody order is in force is residing in Scotland or Northern Ireland, as the case may be, or proposes to reside there during the licence period¹⁶;
- 466 (b) the Secretary of State has made, or has indicated his willingness to make, an order for the transfer of a prisoner or the transfer of supervision of a released prisoner in relation to the offender¹⁷; and
- 467 (c) it appears to the court that the conditions which determine whether a transfer order may be made¹⁸ are satisfied¹⁹,

the power of the court to amend the order²⁰ includes power to amend it by requiring the requirements included in the order to be complied with in Scotland or Northern Ireland, as the case may be, and the offender's compliance with them to be supervised in accordance with such arrangements as can be made by the local authority in Scotland in whose area he resides, or will be residing during the licence period, or by the Probation Board for Northern Ireland, as the case may be²¹.

A custody plus order so made²² or a custody plus order or intermittent custody order so amended²³ must:

- 468 (i) specify the local authority area in Scotland, or the petty sessions district in Northern Ireland, as the case may be, in which the offender resides or will reside during the licence period²⁴; and
- 469 (ii) require the local authority for that area in Scotland or the Probation Board for Northern Ireland, as the case may be, to appoint or assign an officer who will be responsible for discharging in relation to him the functions conferred²⁵ on responsible officers²⁶.

Where a court so makes a custody plus order or so amends a custody plus order or intermittent custody order, it must provide the relevant documents²⁷ to the local authority for the area in Scotland specified in the order or the Probation Board for Northern Ireland, as the case may be²⁸, and to the sheriff court in Scotland having jurisdiction in the locality or the court of summary jurisdiction acting for the petty sessions district in Northern Ireland, as the case may be, in which the offender resides or proposes to reside²⁹.

1 At the date at which this volume states the law no day had been appointed for the commencement of the Criminal Justice Act 2003 s 188, Sch 11 (see the text and notes 2-29).

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the meaning of 'custody plus order' see PARA 98.

4 As to the meaning of 'licence period' see PARA 98.

5 Any reference in the Criminal Justice Act 2003 s 188, Sch 11 to a requirement being imposed by, or included in, a custody plus order or intermittent custody order is a reference to compliance with the requirement being required by the order to be a condition of a licence: Sch 11 para 1(b) (not yet in force).

6 In the Criminal Justice Act 2003 Sch 11 Pt 2 (paras 2-8), 'local authority' means a council constituted under the Local Government etc (Scotland) Act 1994 s 2; and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act: Criminal Justice Act 2003 Sch 11 para 8 (not yet in force).

7 Criminal Justice Act 2003 Sch 11 paras 2(1), 9(1) (not yet in force). If an order has been so made in relation to an offender but: (1) the Secretary of State decides not to make an order under the Crime (Sentences) Act 1997 Sch 1 para 1 or Sch 1 para 4 (transfer of prisoners or transfer of supervision of released prisoners: see **PRISONS** vol 36(2) (Reissue) PARAS 548, 551) in relation to him (Criminal Justice Act 2003 Sch 11 paras 2(4)(a), 9(4)(a) (not yet in force)); and (2) the offender has not applied under Sch 11 para 22 (see PARA 109) for the amendment of the order (Sch 11 paras 2(4)(b), 9(4)(b) (not yet in force)), the Secretary of State must apply to the court under Sch 11 para 22 for the amendment of the order (Sch 11 paras 2(4), 9(4) (not yet in force)).

8 Criminal Justice Act 2003 Sch 11 paras 2(2)(b), 9(2)(b) (not yet in force).

9 Criminal Justice Act 2003 Sch 11 paras 2(3)(a), 9(3)(a) (not yet in force). As to unpaid work requirements see s 199; and PARA 271.

10 Criminal Justice Act 2003 Sch 11 paras 2(3)(b), 9(3)(b) (not yet in force). As to activity requirements see s 201; and PARA 272.

11 Criminal Justice Act 2003 Sch 11 paras 2(3)(c), 9(3)(c) (not yet in force). As to programme requirements see s 202; and PARA 273.

12 Criminal Justice Act 2003 Sch 11 para 9(3)(d) (not yet in force). As to attendance centre requirements in Northern Ireland see s 214; and PARA 283. The court may not by virtue of these provisions require an attendance centre requirement to be complied with in Scotland: Sch 11 para 4 (not yet in force).

13 Criminal Justice Act 2003 Sch 11 paras 2(3)(d), 9(3)(e) (not yet in force). As to electronic monitoring requirements see s 215; and PARA 284.

- 14 Criminal Justice Act 2003 Sch 11 paras 2(2)(a), 9(2)(a) (not yet in force).
- 15 As to these powers see PARA 105.
- 16 Criminal Justice Act 2003 Sch 11 paras 3(a), 10(a) (not yet in force).
- 17 Criminal Justice Act 2003 Sch 11 paras 3(b), 10(b) (not yet in force). As to such an order see the Crime (Sentences) Act 1997 s 41 Sch 1 para 1 or Sch 1 para 4; and **PRISONS** vol 36(2) (Reissue) PARAS 548, 551.
- 18 Ie the conditions set out in the Criminal Justice Act 2003 Sch 11 paras 2(2), 9(2) (see the text and notes 8-14).
- 19 Criminal Justice Act 2003 Sch 11 paras 3(c), 10(c) (not yet in force).
- 20 Ie under the Criminal Justice Act 2003 Sch 10 (see PARAS 104-107).
- 21 Criminal Justice Act 2003 Sch 11 paras 3, 10 (not yet in force). The arrangements referred to in the text are those set out in Sch 11 paras 2(2)(b), 9(2)(b) (see the text and note 8). The court may not by virtue of these provisions require an attendance centre requirement to be complied with in Scotland: Sch 11 para 4 (not yet in force).
- 22 Ie made in accordance with the Criminal Justice Act 2003 Sch 11 para 2 or Sch 11 para 9 (see the text and notes 1-14).
- 23 Ie in accordance with the Criminal Justice Act 2003 Sch 11 para 3 or Sch 11 para 10 (see the text and notes 15-21).
- 24 Criminal Justice Act 2003 Sch 11 paras 5(a), 11(a) (not yet in force).
- 25 Ie the functions conferred by the Criminal Justice Act 2003 Pt 12 (ss 142-305).
- 26 Criminal Justice Act 2003 Sch 11 paras 5(b), 11(b) (not yet in force). Section 216 (local justice area to be specified: see PARA 98) does not apply to an order so made or amended: Sch 11 paras 5, 11 (amended by SI 2005/886).
- 27 For these purposes 'relevant document' means a copy of the order as made or amended (Criminal Justice Act 2003 Sch 11 paras 6(2)(a), 12(2)(a) (not yet in force)) and such other documents and information relating to the case as the court making or amending the order considers likely to be of assistance (Sch 11 paras 6(2)(b), 12(2)(b) (not yet in force)).
- 28 Criminal Justice Act 2003 Sch 11 paras 6(1)(a), 12(1)(a) (not yet in force).
- 29 Criminal Justice Act 2003 Sch 11 paras 6(1)(b), 12(1)(b) (not yet in force). The provisions of s 219(1)(b)-(d) (which relate to the provision of copies: see PARA 98 note 17) do not apply in relation to an order so made or amended: Sch 11 paras 6(1), 12(1) (not yet in force).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/4. CUSTODY PLUS AND INTERMITTENT CUSTODY ORDERS/109. After transfer to Scotland or Northern Ireland.

109. After transfer to Scotland or Northern Ireland.

As from a day to be appointed¹, at any time while a custody plus order² made or amended in respect of an offender residing in Scotland or Northern Ireland³, or an intermittent custody order⁴ amended in respect of an offender residing in Scotland or Northern Ireland⁵, is in force in respect of an offender⁶, the home court⁷ may exercise any power⁸ of amendment of a custody plus order or intermittent custody order as if it were the original court⁹. Where the home court proposes to exercise the power of amendment of the requirements, otherwise than on the application of the offender, it must issue a citation (if it is in Scotland) or summons (if it is in Northern Ireland) requiring the offender to appear before it¹⁰, and if he does not appear in answer to the citation or summons it may issue a warrant for the offender's arrest¹¹. However, this does not apply to any order cancelling any requirement of a custody plus order or intermittent custody order¹².

Where an application is made¹³ to the home court for the amendment of a custody plus order or an intermittent custody order, the home court may (instead of dealing with the application) require the offender to appear before the original court¹⁴.

No court may amend or further amend a custody plus order or an intermittent custody order unless it appears to the court that the conditions which determine whether a transfer order may be made¹⁵ are satisfied in relation to any requirement to be imposed¹⁶.

On the making of an order amending a custody plus order or intermittent custody order the court must provide copies of the amending order to the offender and the relevant officer¹⁷.

Where:

- 470 (1) a custody plus order has been made¹⁸ or a custody plus or intermittent custody order has been amended¹⁹ but (in any of those cases) the Secretary of State has not made a prisoner transfer order or an order transferring supervision of a released prisoner in relation to the offender²⁰; or
- 471 (2) the Secretary of State has made, or indicated his willingness to make, an order transferring the offender or his supervision back to England and Wales²¹,

the court²² may, on the application of the offender or the Secretary of State, amend the custody plus order or intermittent custody order by requiring it to be complied with in England and Wales²³.

1 At the date at which this volume states the law no day had been appointed for the commencement of the Criminal Justice Act 2003 s 188, Sch 11 (see the text and notes 2-23).

2 As to the meaning of 'custody plus order' see PARA 98.

3 I.e. a custody plus order made or amended in accordance with the Criminal Justice Act 2003 Sch 11 para 2, 3 9 or 10 (see PARA 108).

4 As to the meaning of 'intermittent custody order' see PARA 100.

5 I.e. an intermittent custody order amended in accordance with the Criminal Justice Act 2003 Sch 11 para 3 or Sch 11 para 10 (see PARA 108).

6 Criminal Justice Act 2003 Sch 11 para 14 (not yet in force).

7 For these purposes, 'home court' means:

94 (1) if the offender resides in Scotland, or will be residing there during the licence period, the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside (Criminal Justice Act 2003 Sch 11 para 15 (not yet in force)); and

95 (2) if he resides in Northern Ireland, or will be residing there during the licence period, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside (Sch 11 para 15 (not yet in force)).

As to the meaning of 'licence period' see PARA 98.

8 Ie any power under the Criminal Justice Act 2003 Sch 10 para 4 or Sch 10 para 5 (see PARAS 105-106).

9 Criminal Justice Act 2003 Sch 11 para 17(1) (not yet in force). 'Original court' means the court in England and Wales which made or last amended the custody plus order or intermittent custody order: Sch 11 para 15 (not yet in force).

10 Criminal Justice Act 2003 Sch 11 para 17(2)(a)(i), (b)(i) (not yet in force). The Summary Jurisdiction (Process) Act 1881 s 4 (which provides, among other things, for service in England and Wales of Scottish citations or warrants) applies to any citation or warrant issued under the Criminal Justice Act 2003 Sch 11 para 17(2)(a) as it applies to a citation or warrant granted under the Criminal Procedure (Scotland) Act 1995 s 134: Criminal Justice Act 2003 Sch 11 para 24(1) (not yet in force). A summons issued by a court in Northern Ireland under Sch 11 para 17(2)(b) may, in such circumstances as may be prescribed by rules of court, be served in England, Wales or Scotland: Sch 11 para 24(2) (not yet in force).

11 Criminal Justice Act 2003 Sch 11 para 17(2)(a)(ii), (b)(ii) (not yet in force).

12 Criminal Justice Act 2003 Sch 11 para 17(2), (3) (not yet in force).

13 Ie by virtue of the Criminal Justice Act 2003 Sch 11 para 17 (see the text and notes 1-12).

14 Criminal Justice Act 2003 Sch 11 para 18 (not yet in force).

15 Ie the conditions set out in the Criminal Justice Act 2003 Sch 11 paras 2(2), 9(2) (see PARA 108).

16 Criminal Justice Act 2003 Sch 11 para 19 (not yet in force). Schedule 11 para 19 does not apply to any amendment made by Sch 11 para 22(1) (see the text and notes 22-23): Sch 11 para 19 (not yet in force).

The provisions of Sch 11 paras 1-19 have effect in relation to any amendment of a custody plus or intermittent custody order by any court as they have effect in relation to the amendment of such an order by virtue of Sch 11 para 3 or Sch 11 para 10 (see PARA 108): Sch 11 para 20 (not yet in force).

17 Criminal Justice Act 2003 Sch 11 para 21(a) (not yet in force). The 'relevant officer' means:

96 (1) where the order specifies a local authority area in Scotland, the local authority officer appointed or assigned under Sch 11 para 5 (see PARA 108) (Sch 11 para 15 (not yet in force)); and

97 (2) where the order specifies a petty sessions district in Northern Ireland, the probation officer appointed or assigned under Sch 11 para 11 (see PARA 108) (Sch 11 para 15 (not yet in force)).

In the case of an amending order which substitutes a new local authority area or petty sessions district, Sch 11 paras 5, 6 (see PARA 108) or, as the case may be, Sch 11 paras 11, 12 (see PARA 108) have effect in relation to the order as they have effect in relation to an order made or amended in accordance with Sch 11 para 2, 3, 9 or 10 (see PARA 108): Sch 11 para 21(b) (not yet in force).

18 Ie in accordance with the Criminal Justice Act 2003 Sch 11 para 2 or Sch 11 para 9 (see PARA 108).

19 Ie in accordance with the Criminal Justice Act 2003 Sch 11 para 3 or Sch 11 para 10 (see PARA 108).

20 Criminal Justice Act 2003 Sch 11 para 22(1)(a) (not yet in force). As to such an order see the Crime (Sentences) Act 1997 s 41, Sch 1 para 1 or Sch 1 para 4; and **PRISONS** vol 36(2) (Reissue) PARAS 548, 551.

21 Criminal Justice Act 2003 Sch 11 para 22(1)(b) (not yet in force). As to such an order see the Crime (Sentences) Act 1997 Sch 1 para 7(1); and **PRISONS** vol 36(2) (Reissue) PARA 553.

22 In a case falling within head (1) in the text, 'court' means the original court: Criminal Justice Act 2003 Sch 11 para 22(2) (not yet in force).

23 Criminal Justice Act 2003 Sch 11 para 22(1) (not yet in force). In a case where Sch 11 para 2(4) or Sch 11 para 9(4) (see PARA 108) requires the Secretary of State to make an application under these provisions, the court must make an amending order under Sch 11 para 22: Sch 11 para 22(3) (not yet in force).

Where under Sch 11 para 22 the court amends a custody plus order or intermittent custody order which contains requirements which, in the opinion of the court, cannot be complied with in the local justice area in which the offender is residing or proposes to reside, the court must, in accordance with Sch 10 para 5 (see PARA 106), either cancel those requirements or substitute for them other requirements which can be complied with if the offender resides in that area: Sch 11 para 22(4) (Sch 11 para 22(4)-(7) amended by SI 2005/886) (not yet in force).

Where the court amends under the Criminal Justice Act 2003 Sch 11 para 22 any custody plus order or intermittent custody order imposing a programme requirement, the court must ensure that the requirement as amended specifies a programme which is available in the local justice area in England and Wales in which the offender is residing or proposes to reside: Sch 11 para 22(5) (as so amended) (not yet in force). As to programme requirements see s 202; and PARA 273.

The custody plus order or intermittent custody order as amended under Sch 11 para 22 must specify the local justice area in which the offender resides or proposes to reside in the licence period: Sch 11 para 22(6) (as so amended) (not yet in force).

On the making under Sch 11 para 22 of an order amending a custody plus order or intermittent custody order, the court must:

- 98 (1) provide copies of the amending order to the offender, the relevant officer and the local probation board acting for the new local justice area or (as the case may be) a provider of probation services operating in the new local justice area (Sch 11 para 22(7)(a) (amended by SI 2008/912) (not yet in force)); and
- 99 (2) provide the magistrates' court acting in that area with a copy of the amending order and such other documents and information relating to the case as the home court considers likely to be of assistance to the court acting in that area in the exercise of its functions in relation to the order (Sch 11 para 22(7)(b) (not yet in force)).

As to local probation boards and providers of probation services see PARAS 733-760. Where an order has been amended under Sch 11 para 22, the provisions of Sch 11 paras 1-21 cease to apply to the order as amended: Sch 11 para 22(8) (not yet in force).

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5. SUSPENDED SENTENCES OF IMPRISONMENT AND DETENTION

(1) OFFENCES COMMITTED AFTER 4 APRIL 2005

(i) Making the Suspended Sentence Order

110. Powers of court.

Where in respect of an offence committed on or after 4 April 2005¹ a court² passes a sentence of imprisonment³ not exceeding 12 months⁴ or, until a day to be appointed⁵, a sentence of detention in a young offender institution⁶ of a corresponding term⁷, the court may:

- 472 (1) order the offender to comply during a period specified in the order (the 'supervision period'⁸) with one or more requirements ('community requirements')⁹ specified in the order¹⁰; and
- 473 (2) order that the sentence is not to take effect unless either during the supervision period the offender fails to comply with a community requirement so imposed, or during a period specified in the order for these purposes (the 'operational period'¹¹) the offender commits in the United Kingdom¹² another offence (whether or not punishable with imprisonment), and (in either case) a court having power to do so subsequently orders¹³ that the original sentence is to take effect¹⁴.

Such an order is known as a 'suspended sentence order' and the sentence under it as a 'suspended sentence'¹⁵. It is compulsory that a community requirement is imposed as part of a suspended sentence order¹⁶. A court which passes a suspended sentence on any person for an offence may not impose a community sentence¹⁷ in his case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court¹⁸.

1 4 April 2005 is the date on which the Criminal Justice Act 2003 ss 189-194 (see the text and notes 2-18; and PARAS 111-112, 117) were brought into force by the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2) of which provides that the coming into effect of ss 189-194 on that date is of no effect in relation to offences committed before that date. In connection with offences committed before 4 April 2005 see PARAS 132-138.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the meaning of 'sentence of imprisonment' see PARAS 30 note 5, 98 note 4.

4 Specifically, until the day on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force, these provisions (ie the Criminal Justice Act 2003 ss 189-194: see the text and notes 5-18; and PARAS 111-112, 115-117) apply where a court passes a sentence of imprisonment for a term of at least 14 days but not more than 12 months (or, in the case of a magistrates' court, at least 14 days but not more than six months), and as from that day these provisions apply where a court passes a sentence of imprisonment for a term of at least 28 weeks but not more than 51 weeks in accordance with the Criminal Justice Act 2003 s 181 (see PARA 98): Criminal Justice Act 2003 s 189(1) (s 189(1), (2), (6) amended by SI 2005/643). Where two or more sentences imposed on the same occasion are to be served consecutively, then until the day on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 comes into force, these powers (ie the powers

conferred by the Criminal Justice Act 2003 s 189(1) (see the text and notes 5-14)) are not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 12 months (or, in the case of a magistrates' court, six months), and as from that day these powers are not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 65 weeks: s 189(2) (as so amended). At the date at which this volume states the law no day had been appointed for the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 to take effect. Provision is made for the crediting of periods of remand in custody: see PARA 36.

5 le until the date on which the Criminal Justice and Court Services Act 2000 s 61 (abolition of sentences of detention in a young offender institution, custody for life etc: PARA 11) comes into force. See note 6.

6 For these purposes a sentence of detention in a young offender institution may be passed on a person aged at least 18 but under 21: Criminal Justice Act 2003 s 189(1) (as amended: see note 4). As to a sentence of detention in a young offender institution see PARA 85. As to the determination of a person's age for these purposes see PARA 27 note 13. At the date at which this volume states the law no day had been appointed for the commencement of s 61.

7 As to the applicable terms for these purposes see note 4.

8 As to the supervision period see PARA 111.

9 As to the community requirements see the Criminal Justice Act 2003 s 190(1); and PARA 112.

10 Criminal Justice Act 2003 s 189(1)(a), (7)(c). Section 189(1)(a) has effect subject to s 218 (availability of arrangements in local area: see PARAS 271-272, 283-284) and, in connection with particular requirements, to s 199(3) (unpaid work requirement: see PARA 271), s 201(3), (4) (activity requirement: see PARA 272), s 202(4), (5) (programme requirement: see PARA 273), s 203(2) (prohibited activity requirement: see PARA 274), s 207(3) (mental health treatment requirement: see PARA 278), s 209(2) (drug rehabilitation requirement: see PARA 279) and s 212(2), (3) (alcohol treatment requirement: see PARA 281): s 190(2)(a)-(g).

11 As to the operational period see PARA 111.

12 As to the meaning of 'United Kingdom' see PARA 9 note 2.

13 le under the Criminal Justice Act 2003 Sch 12 para 8 (see PARA 128). Subject to any provision to the contrary contained in the Criminal Justice Act 1967, the Powers of Criminal Courts (Sentencing) Act 2000 or any other enactment passed or instrument made under any enactment after 31 December 1967, a suspended sentence which has not taken effect under the Criminal Justice Act 2003 Sch 12 para 8 is to be treated as a sentence of imprisonment (or, until a day to be appointed, in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution) for the purposes of all enactments and instruments made under enactments: s 189(6) (as amended: see note 4).

14 Criminal Justice Act 2003 s 189(1)(b).

15 A 'suspended sentence' means a sentence to which a suspended sentence order relates and a 'suspended sentence order' means an order under the Criminal Justice Act 2003 s 189(1): s 189(7)(a), (b). The court by which a suspended sentence order is made must forthwith provide copies of the order:

100 (1) to the offender (s 219(1)(a));

101 (2) if the offender is aged 18 or over, to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court (s 219(1)(b) (amended by SI 2008/912));

102 (3) if the offender is aged 16 or 17, to an officer of a local probation board assigned to the court, an officer of a provider of probation services acting at the court or a member of a youth offending team assigned to the court (Criminal Justice Act 2003 s 219(1)(c) (amended by SI 2008/912)); and

103 (4) where the order specifies a local justice area in which the court making the order does not act, to the local probation board acting for that area or, as the case may be, a provider of probation services acting in that area (Criminal Justice Act 2003 s 219(1)(d) (amended by SI 2005/886; SI 2008/912)).

Provision is also made as to the provision of copies to the persons concerned with the supervision of requirements imposed by an order: see the Criminal Justice Act 2003 s 219(2), Sch 14; and PARAS 272, 276-279, 280-284. See also s 219(3); and PARA 112 note 22. As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17.

For a definitive sentencing guideline in relation to suspended sentences see Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) paras 2.2.1-2.2.22. A suspended sentence is a sentence of imprisonment (see note 13), and as such it is subject to the same criteria as a sentence of imprisonment which is to commence immediately: in particular, this requires a court to be satisfied that the custody threshold has been passed and that the length of the term is the shortest term commensurate with the seriousness of the offence: *New Sentences: Criminal Justice Act 2003* para 2.2.6.

There are many similarities between the suspended sentence and the community sentence: in both cases, requirements can be imposed during the supervision period and the court can respond to breach by sending the offender to custody: *New Sentences: Criminal Justice Act 2003* para 2.2.10. The crucial difference is that the suspended sentence is a prison sentence and is appropriate only for an offence that passes the custody threshold and for which imprisonment is the only option (although a community sentence may also be imposed for an offence that passes the custody threshold where the court considers that to be appropriate): *New Sentences: Criminal Justice Act 2003* para 2.2.10.

Before making the decision to suspend sentence, the court must already have decided that a prison sentence is justified and should also have decided the length of sentence that would be the shortest term commensurate with the seriousness of the offence if it were to be imposed immediately: *New Sentences: Criminal Justice Act 2003* para 2.2.12. The decision to suspend the sentence should not lead to a longer term being imposed than if the sentence were to take effect immediately: *New Sentences: Criminal Justice Act 2003* para 2.2.12.

16 See *R v Lees-Wolfenden* [2006] EWCA Crim 3068, [2007] 1 Cr App Rep (S) 730; *R v Younis* [2008] EWCA Crim 2211, [2008] All ER (D) 111 (Sep). In connection with breaches of community requirements see PARA 311.

17 As to the meaning of 'community sentence' see the Criminal Justice Act 2003 s 147(1); and PARA 163 (definition applied by virtue of s 305(1)).

18 Criminal Justice Act 2003 s 189(5).

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111. The supervision period and the operational period.

Where a suspended sentence order¹ is made in respect of an offence committed on or after 4 April 2005² the supervision period and the operational period³ must each be a period of not less than six months and not more than two years beginning with the date of the order⁴, and the supervision period must not end later than the operational period⁵.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the 'supervision period' and the 'operational period' see PARA 110.

4 Criminal Justice Act 2003 s 189(3). The operational period of a suspended sentence should reflect the length of the sentence being suspended: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) para 2.2.13. As an approximate guide, an operational period of up to 12 months might normally be appropriate for a suspended sentence of up to six months and an operational period of up to 18 months might normally be appropriate for a suspended sentence of up to 12 months: *New Sentences: Criminal Justice Act 2003* para 2.2.13.

5 Criminal Justice Act 2003 s 189(4).

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112. Community requirements.

Where a suspended sentence order¹ is made in respect of an offence committed on or after 4 April 2005² the community requirements required to be specified for the purposes of the order³ are:

- 474 (1) an unpaid work requirement⁴;
- 475 (2) an activity requirement⁵;
- 476 (3) a programme requirement⁶;
- 477 (4) a prohibited activity requirement⁷;
- 478 (5) a curfew requirement⁸;
- 479 (6) an exclusion requirement⁹;
- 480 (7) a residence requirement¹⁰;
- 481 (8) a mental health treatment requirement¹¹;
- 482 (9) a drug rehabilitation requirement¹²;
- 483 (10) an alcohol treatment requirement¹³;
- 484 (11) a supervision requirement¹⁴;
- 485 (12) in a case where the offender is aged under 25¹⁵, an attendance centre requirement¹⁶.

Where the court makes a suspended sentence order imposing a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement¹⁷ unless it is prevented¹⁸ from doing so or unless, in the particular circumstances of the case, it considers it inappropriate to do so¹⁹. Where the court makes a suspended sentence order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless it is prevented²⁰ from doing so²¹.

A suspended sentence order must specify the local justice area in which the offender resides or will reside²².

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the power to require a person in respect of whom a suspended sentence is passed to comply with one or more community requirements see the Criminal Justice Act 2003 s 189(1)(a); and PARA 110. Before making a suspended sentence order imposing two or more different requirements falling within heads (1) to (12) in the text, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other: s 190(5).

Because of the very clear deterrent threat involved in a suspended sentence, requirements imposed as part of that sentence should generally be less onerous than those imposed as part of a community sentence: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) para 2.2.14. A court wishing to impose onerous or intensive requirements on an offender should reconsider its decision to suspend

sentence and consider whether a community sentence might be more appropriate: *New Sentences: Criminal Justice Act 2003* para 2.12.14.

4 Criminal Justice Act 2003 s 190(1)(a). See s 199; and PARA 271.

5 Criminal Justice Act 2003 s 190(1)(b). See s 201; and PARA 272.

6 Criminal Justice Act 2003 s 190(1)(c). See s 202; and PARA 273.

7 Criminal Justice Act 2003 s 190(1)(d). See s 203; and PARA 274.

8 Criminal Justice Act 2003 s 190(1)(e). See s 204; and PARA 275.

9 Criminal Justice Act 2003 s 190(1)(f). See s 205; and PARA 276.

10 Criminal Justice Act 2003 s 190(1)(g). See s 206; and PARA 277.

11 Criminal Justice Act 2003 s 190(1)(h). See s 207; and PARA 278.

12 Criminal Justice Act 2003 s 190(1)(i). See s 209; and PARA 279.

13 Criminal Justice Act 2003 s 190(1)(j). See s 212; and PARA 281.

14 Criminal Justice Act 2003 s 190(1)(k). See s 213; and PARA 282.

15 As to the determination of a person's age for these purposes see PARA 27 note 13.

16 Criminal Justice Act 2003 s 190(1)(l). See s 214; and PARA 283.

17 le as defined by the Criminal Justice Act 2003 s 215 (see PARA 284).

18 le by the Criminal Justice Act 2003 s 215(2) (see PARA 284) or s 218(4) (see PARA 284).

19 Criminal Justice Act 2003 s 190(3).

20 See note 18.

21 Criminal Justice Act 2003 s 190(4).

22 Criminal Justice Act 2003 s 216(1) (amended by SI 2005/886). Where an order specifies a local justice area in which the court making the order does not act, the court making the order must provide to the magistrates' court acting in that area a copy of the order and documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Criminal Justice Act 2003 s 219(3) (amended by SI 2005/886).

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113. Requirement to avoid conflict with religious beliefs and education.

The court must ensure, as far as practicable, that any requirement imposed by a suspended sentence order¹ is such as to avoid:

486 (1) any conflict with the offender's religious beliefs or with the requirements of any other relevant order² to which he may be subject³; and

487 (2) any interference with the times, if any, at which he normally works or attends any educational establishment⁴.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110.

2 I.e. a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

3 Criminal Justice Act 2003 s 217(1)(a). The Secretary of State may by order provide that the Criminal Justice Act 2003 s 217(1) is to have effect with such additional restrictions as may be specified in the order: s 217(3). At the date at which this volume states the law no such order had been made.

4 Criminal Justice Act 2003 s 217(1)(b) (amended by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 91).

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114. Duty of offender to keep in touch with responsible officer.

An offender in respect of whom a suspended sentence order¹ is in force must keep in touch with the responsible officer² in accordance with such instructions as he may from time to time be given by that officer³ and must notify him of any change of address⁴.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110.

2 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7.

3 Criminal Justice Act 2003 s 220(1)(a). The obligation imposed by s 220(1) is enforceable as if it were a requirement imposed by the order: s 220(2). As to the community requirements see s 190(1); and PARA 112.

4 Criminal Justice Act 2003 s 220(1)(b). See note 3.

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115. Provision for review of order.

A suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² may (except in the case of an order imposing a drug rehabilitation requirement³):

- 488 (1) provide for the order to be reviewed periodically at specified intervals⁴;
- 489 (2) provide for each review to be made⁵ at a hearing held for the purpose by the court responsible for the order⁶ (a 'review hearing')⁷;
- 490 (3) require the offender to attend each review hearing⁸; and
- 491 (4) provide for the responsible officer⁹ to make to the court responsible for the order, before each review, a report on the offender's progress in complying with the community requirements¹⁰ of the order¹¹.

If at a review held without a hearing the court¹², after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, it may require the offender to attend a hearing of the court at a specified time and place¹³. If at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the community requirements of the order, it may adjourn the hearing for the purpose of dealing with the case under its powers¹⁴ to deal with a breach of a community requirement¹⁵.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to drug rehabilitation requirements see the Criminal Justice Act 2003 s 209; and PARA 279; as to the requirements which may be imposed in a suspended sentence order see PARA 112. Section 191(1) (see the text and notes 4-11) does not apply in the case of an order imposing such a requirement, provision for the review of which is made by s 210 (see PARA 280): s 191(2).

4 Criminal Justice Act 2003 s 191(1)(a).

5 ie subject to the Criminal Justice Act 2003 s 192(4) (see PARA 117).

6 In the Criminal Justice Act 2003 s 191 references to the court responsible for a suspended sentence order are references: (1) where a court is specified in the order in accordance with s 192(4) (see PARA 117), to that court (s 191(3)(a)); and (2) in any other case, to the court by which the order is made (s 191(3)(b)). Where the area specified in a suspended sentence order made by a magistrates' court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for this purpose a magistrates' court which acts for the area specified in the order: s 191(4). Where a suspended sentence order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken for the purposes of s 191(3)(b) to have been made by the Crown Court: s 191(5).

7 Criminal Justice Act 2003 s 191(1)(b).

8 Criminal Justice Act 2003 s 191(1)(c).

9 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. Where a suspended sentence order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see

PARA 130) is in force in respect of an offender, any reference to the responsible officer has effect as a reference to the relevant officer (as defined: see Sch 13 para 11; and PARA 131 note 6): Sch 13 para 12(1), (2).

10 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

11 Criminal Justice Act 2003 s 191(1)(d).

12 In the Criminal Justice Act 2003 s 192, any reference to the court, in relation to a review without a hearing, is to be read: (1) in the case of the Crown Court, as a reference to a judge of the court (s 192(8)(a)); and (2) in the case of a magistrates' court, as a reference to a justice of the peace (s 192(8)(b) (amended by SI 2005/886)).

13 Criminal Justice Act 2003 s 192(5).

14 Ie under the Criminal Justice Act 2003 Sch 12 para 8 (see PARA 128).

15 Criminal Justice Act 2003 s 192(6).

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(ii) Amending the Order

116. Amendment of substantive provisions following review.

At a review hearing of a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² the court³ may, after considering the responsible officer's⁴ report, amend the community requirements⁵ of the order, or any provision of the order which relates to those requirements⁶. However the court:

- 492 (1) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses his willingness to comply with that requirement⁷;
- 493 (2) may not amend a mental health treatment requirement⁸, a drug rehabilitation requirement⁹ or an alcohol treatment requirement¹⁰ unless the offender expresses his willingness to comply with the requirement as amended¹¹;
- 494 (3) may amend the supervision period¹² only if the period as amended complies with specified provisions¹³;
- 495 (4) may not amend the operational period¹⁴ of the suspended sentence¹⁵; and
- 496 (5) except with the consent of the offender, may not amend the order while an appeal against it is pending¹⁶.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2. As to provision for the review of a suspended sentence order see PARA 115.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'court' see PARAS 1 note 1, 115 note 12.

4 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7.

5 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

6 Criminal Justice Act 2003 s 192(1).

7 Criminal Justice Act 2003 s 192(2)(a). For these purposes, a community requirement falling within any of s 190(1)(a)-(l) (see PARA 112) is of the same kind as any other community requirement falling within those provisions (s 192(3)(a)); and an electronic monitoring requirement (see s 215; and PARA 284) is a community requirement of the same kind as any requirement falling within s 190(1) to which it relates (s 192(3)(b)).

8 See the Criminal Justice Act 2003 s 207; and PARA 278.

9 See the Criminal Justice Act 2003 s 209; and PARA 279.

10 See the Criminal Justice Act 2003 s 212; and PARA 281.

11 Criminal Justice Act 2003s 192(2)(b).

12 As to the supervision period see PARA 110.

- 13 Criminal Justice Act 2003 s 192(2)(c). The specified provisions are s 189(3), (4) (see PARA 110).
- 14 As to the operational period see PARA 110.
- 15 Criminal Justice Act 2003 s 192(2)(d).
- 16 Criminal Justice Act 2003 s 192(2)(e).

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117. Amendment of review provisions following review.

If at any review of a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005², before a review hearing is held, the court³, after considering the responsible officer's⁴ report, is of the opinion that the offender's progress in complying with the community requirements⁵ of the order is satisfactory, it may order that no review hearing is to be held at that review; and if at any review, before a review hearing is held or at a review hearing, the court, after considering that report, is of that opinion, it may amend the suspended sentence order so as to provide for each subsequent review to be held without a hearing⁶.

At a review hearing the court may amend the suspended sentence order so as to vary the intervals for periodic review specified⁷ in it⁸.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2. As to provision for the review of a suspended sentence order see PARA 115.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'court' see PARAS 1 note 1, 115 note 12.

4 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

5 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

6 Criminal Justice Act 2003 s 192(4).

7 I.e. specified under the Criminal Justice Act 2003 s 191(1) (see PARA 115).

8 Criminal Justice Act 2003 s 192(7).

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118. Cancellation of community requirements.

Where, at any time while a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² is in force, it appears to the appropriate court³ on the application of the offender⁴ or the responsible officer⁵ that, having regard to the circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may cancel the community requirements of the suspended sentence order⁶. The circumstances in which the appropriate court may exercise this power include the offender's making good progress or his responding satisfactorily to supervision⁷.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 For these purposes 'appropriate court' means: (1) in the case of a suspended sentence order which is subject to review, the court responsible for the order (Criminal Justice Act 2003 Sch 12 paras 13(3)(a), 14(5), 15(6), 16(4), 18(2)); (2) in the case of a suspended sentence order which was made by the Crown Court and does not include any direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the Crown Court (Sch 12 para 13(3)(b)); and (3) in any other case, a magistrates' court acting in the local justice area concerned (Sch 12 para 13(3)(c) (amended by SI 2005/886). As to the community requirements of a suspended sentence order see PARAS 110, 112. Where a suspended sentence order made or amended in accordance with the Criminal Justice Act 2003 Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, any reference to the appropriate court has effect as a reference to the original court: Sch 13 para 12(1), (4). As to the meaning of 'original court' for those purposes see PARA 131 note 11.

'Local justice area concerned', in relation to a suspended sentence order, means the local justice area for the time being specified in the order: Criminal Justice Act 2003 Sch 12 para 1 (amended by SI 2005/886). Where a suspended sentence order made or amended in accordance with the Criminal Justice Act 2003 Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, any reference to a magistrates' court acting in the local justice area concerned has effect as a reference to a magistrates' court acting in the same local justice area as the original court; and any reference to a justice of the peace acting in the local justice area concerned has effect as a reference to a justice of the peace acting in the same local justice area as that court: Sch 13 para 12(1), (3) (amended by SI 2005/886).

4 For these purposes the 'offender' is the person in respect of whom a suspended sentence order is made: Criminal Justice Act 2003 Sch 12 para 1.

5 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

6 Criminal Justice Act 2003 Sch 12 para 13(1). No application may be made under Sch 12 para 13 while an appeal against the suspended sentence is pending: Sch 12 para 19(1).

7 Criminal Justice Act 2003 Sch 12 para 13(2).

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119. Amendment of community requirements.

Where a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² is in force the appropriate court³ may, at any time during the supervision period⁴ and on the application of the offender or the responsible officer⁵, by order amend any community requirement of a suspended sentence order either by cancelling the requirement⁶ or by replacing it with a requirement of the same kind⁷ which the court could include if it were then making the order⁸. The court may not so amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended⁹. If the offender fails to express his willingness to comply with a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement as proposed to be so amended by the court, the court may revoke the suspended sentence order and the suspended sentence to which it relates¹⁰ and deal with him, for the offence in respect of which the suspended sentence was imposed, in any way in which it could have dealt with him if he had just been convicted by or before the court of the offence¹¹.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'appropriate court' see PARA 118 note 3.

4 As to the supervision period see PARA 110.

5 No application may be made under these provisions while an appeal against the suspended sentence is pending: Criminal Justice Act 2003 Sch 12 para 19(1). However, this does not apply to an application which relates to a mental health treatment requirement (see PARA 278), a drug rehabilitation requirement (see PARA 279) or an alcohol treatment requirement (see PARA 281) and which is made by the responsible officer with the consent of the offender: Sch 12 para 19(2). As to the meaning of 'responsible officer' see s 197; and PARA 104 note 7. See also PARA 115 note 9. As to the meaning of 'offender' see PARA 118 note 4.

Where a court proposes to exercise its powers under these provisions otherwise than on the application of the offender, the court must summon him to appear before the court (Sch 12 para 20(1)(a)) and, if he does not appear in answer to the summons, it may issue a warrant for his arrest (Sch 12 para 20(1)(b)). However, this does not apply to an order cancelling any community requirement of a suspended sentence order: Sch 12 para 20(2). As to the community requirements of a suspended sentence order see PARAS 110, 112.

6 Criminal Justice Act 2003 Sch 12 para 15(1)(a).

7 For these purposes, a requirement falling within any paragraph of the Criminal Justice Act 2003 s 190(1) (see PARA 112) is of the same kind as any other requirement falling within that paragraph (Sch 12 para 15(2)(a)); and an electronic monitoring requirement (see PARA 284) is a requirement of the same kind as any requirement falling within s 190(1) to which it relates (Sch 12 para 15(2)(b)).

8 Criminal Justice Act 2003 Sch 12 para 15(1)(b). This provision has effect subject to s 190(3), (5) (see PARA 112), s 218 (availability of arrangements in local area: see PARAS 271-272, 283-284) and, in connection with particular requirements, to s 199(3) (unpaid work requirement: see PARA 271), s 201(3), (4) (activity requirement: see PARA 272), s 202(4), (5) (programme requirement: see PARA 273), s 203(2) (prohibited activity requirement: see PARA 274), s 207(3) (mental health treatment requirement: see PARA 278), s 209(2) (drug

rehabilitation requirement: see PARA 279) and s 212(2), (3) (alcohol treatment requirement: see PARA 281): Sch 12 para 21.

9 Criminal Justice Act 2003 Sch 12 para 15(3).

10 Criminal Justice Act 2003 Sch 12 para 15(4)(a).

11 Criminal Justice Act 2003 Sch 12 para 15(4)(b). In so dealing with the offender the court must take into account the extent to which the offender has complied with the requirements of the order: Sch 12 para 15(5).

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120. Amendment by reason of change of residence.

Where a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² is in force and the appropriate court³ is satisfied that the offender⁴ proposes to change, or has changed, his residence from the local justice area concerned⁵ to another local justice area, the court may, and on the application of the responsible officer⁶ must, amend the order by substituting the other local justice area for the area specified in the order⁷. However, the court may not so amend a suspended sentence order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender resides in the local justice area concerned unless⁸ it either cancels those requirements⁹ or substitutes for those requirements other requirements which can be complied with if the offender does not reside in that area¹⁰. Nor may a court so amend a suspended sentence order imposing a programme requirement¹¹ unless it appears to the court that the accredited programme specified in the requirement is available in the other local justice area¹².

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'appropriate court' see PARA 118 note 3. Where a magistrates' court dealing with an offender under the Criminal Justice Act 2003 Sch 12 para 8(2)(c) (see PARA 128) would not otherwise have the power to amend the suspended sentence order under Sch 12 para 14 (see the text and notes 4-12), then Sch 12 para 14 has effect as if the references to the appropriate court were references to the court dealing with the offender: Sch 12 para 8(4A) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 8(1), (4)).

4 As to the meaning of 'offender' see PARA 118 note 4.

5 As to the meaning of 'local justice area concerned' in relation to a suspended sentence order see PARA 118 note 3. Where a suspended sentence order made or amended in accordance with the Criminal Justice Act 2003 Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, any reference in Sch 12 para 14 to the local justice area concerned has effect as a reference to the local authority area (if the home court is in Scotland) or the petty sessions district (if the home court is in Northern Ireland) specified in the order, and any other reference to a local justice area has effect as a reference to a local authority area (if the home court is in Scotland) or a petty sessions district (if the home court is in Northern Ireland): Criminal Justice Act 2003 Sch 13 para 12(1), (6) (amended by SI 2005/886). As to the meaning of 'home court' for these purposes see PARA 131 note 3.

6 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

7 Criminal Justice Act 2003 Sch 12 para 14(1), (2) (Sch 12 para 14(1)-(4) amended by SI 2005/886).

8 In accordance with the Criminal Justice Act 2003 Sch 12 para 15 (see PARA 119).

9 Criminal Justice Act 2003 Sch 12 para 14(3)(a) (as amended: see note 7).

10 Criminal Justice Act 2003 Sch 12 para 14(3)(b) (as amended: see note 7).

11 As to programme requirements see the Criminal Justice Act 2003 s 202; and PARA 273.

12 Criminal Justice Act 2003 Sch 12 para 14(4) (as amended: see note 7).

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121. Amendment of treatment requirements of suspended sentence order on report of practitioner.

Where a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² is in force and the medical practitioner or other person by whom or under whose direction an offender³ is, in pursuance of a mental health treatment requirement⁴, a drug rehabilitation requirement⁵ or an alcohol treatment requirement⁶, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol:

- 497 (1) is of the opinion that the treatment of the offender should be continued beyond the period specified in that behalf in the order⁷, that the offender needs different treatment⁸, that the offender is not susceptible to treatment⁹, or that the offender does not require further treatment¹⁰; or
- 498 (2) is for any reason unwilling to continue to treat or direct the treatment of the offender¹¹,

he must make a report in writing to that effect to the responsible officer¹² and that officer must apply¹³ to the appropriate court¹⁴ for the variation or cancellation of the requirement¹⁵.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'offender' see PARA 118 note 4.

4 Criminal Justice Act 2003 Sch 12 para 16(1), (2)(a). As to a mental health treatment requirement see PARA 278.

5 Criminal Justice Act 2003 Sch 12 para 16(2)(b). As to a drug rehabilitation requirement see PARA 279.

6 Criminal Justice Act 2003 Sch 12 para 16(2)(c). As to an alcohol treatment requirement see PARA 281.

7 Criminal Justice Act 2003 Sch 12 para 16(1)(a), (3)(a).

8 Criminal Justice Act 2003 Sch 12 para 16(3)(b).

9 Criminal Justice Act 2003 Sch 12 para 16(3)(c).

10 Criminal Justice Act 2003 Sch 12 para 16(3)(d).

11 Criminal Justice Act 2003 Sch 12 para 16(1)(b).

12 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

13 See under the Criminal Justice Act 2003 Sch 12 para 15 (see PARA 119).

14 As to the meaning of 'appropriate court' see PARA 118 note 3.

15 Criminal Justice Act 2003 Sch 12 para 16(1).

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122. Amendment in relation to review of drug rehabilitation requirement.

Where a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² is in force and the responsible officer³ is of the opinion that a drug rehabilitation requirement⁴ attached to the order which is subject to review⁵ should be so amended as to provide for each periodic review⁶ to be made without a hearing instead of at a review hearing, or vice versa, he must apply⁷ to the court responsible for the order for the variation of the order⁸.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

4 As to a drug rehabilitation requirement see PARA 279.

5 Ie in accordance with the Criminal Justice Act 2003 s 210(1)(b) (see PARA 280) where one is required (see s 211(6); and PARA 280): Sch 12 paras 2(a), 17.

6 Ie each periodic review required by the Criminal Justice Act 2003 s 211 (see PARA 280).

7 Ie under the Criminal Justice Act 2003 Sch 12 para 15 (see PARA 119).

8 Criminal Justice Act 2003 Sch 12 para 17.

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123. Extension of unpaid work requirement.

Where:

- 499 (1) a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² which imposes an unpaid work requirement³ is in force in respect of any offender⁴; and
- 500 (2) on the application⁵ of the offender or the responsible officer⁶ it appears to the appropriate court⁷ that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made⁸,

the court may, in relation to the order, extend the specified⁹ period of 12 months¹⁰.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to an unpaid work requirement see PARA 271.

4 Criminal Justice Act 2003 Sch 12 para 18(1)(a). As to the meaning of 'offender' see PARA 118 note 4.

5 No application may be made under these provisions while an appeal against the suspended sentence order is pending: Criminal Justice Act 2003 Sch 12 para 19(1).

6 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

7 As to the meaning of 'appropriate court' see PARA 118 note 3.

8 Criminal Justice Act 2003 Sch 12 para 18(1)(b).

9 As specified by the Criminal Justice Act 2003 s 200(2) (see PARA 271).

10 Criminal Justice Act 2003 Sch 12 para 18(1).

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124. Administration of amendments.

On the making of an order amending a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² the proper officer³ of the court must:

- 501 (1) provide copies of the amending order to the offender⁴ and the responsible officer⁵;
- 502 (2) in the case of an amending order which substitutes a new local justice area or, as the case may be, a provider of probation services operating in that area, provide a copy of the amending order to the local probation board acting for that area and the magistrates' court acting in that area⁶;
- 503 (3) in the case of an amending order which imposes or amends a specified requirement⁷, provide a copy of so much of the amending order as relates to that requirement to the person specified⁸ in relation to that requirement⁹; and
- 504 (4) where the court acts in a local justice area other than the one specified in the order prior to the revocation or amendment, provide a copy of the amending order to a magistrates' court acting in the area so specified¹⁰.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2. These provisions (ie the Criminal Justice Act 2003 Sch 12 para 22: see the text and notes 2-10) do not apply where a suspended sentence order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender: Sch 13 para 12(1), (7).

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 Ie, in relation to a magistrates' court, the designated officer for the court (Criminal Justice Act 2003 Sch 12 para 22(3)(a) (Sch 12 para 22(1)(b), (2), (3)(a) amended by SI 2005/886)) and, in relation to the Crown Court, the appropriate officer (Criminal Justice Act 2003 Sch 12 para 22(3)(b)).

4 As to the meaning of 'offender' see PARA 118 note 4.

5 Criminal Justice Act 2003 Sch 12 para 22(1)(a). As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

6 Criminal Justice Act 2003 Sch 12 para 22(1)(b) (as amended (see note 3); amended by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq. Where the proper officer of the court so provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Criminal Justice Act 2003 Sch 12 para 22(2) (as so amended).

7 Ie a requirement specified in the first column of the Criminal Justice Act 2003 Sch 14 (see PARAS 272, 276-280, 283-284).

8 Ie specified in the second column of the Criminal Justice Act 2003 Sch 14 (see PARAS 272, 276-280, 283-284).

9 Criminal Justice Act 2003 Sch 12 para 22(1)(c).

10 Criminal Justice Act 2003 Sch 12 para 22(1)(d) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 8(1), (5)).

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(iii) Breach of Order and Effect of Further Conviction

125. Warning and subsequent breach.

Where a suspended sentence order¹ is in force in respect of an offence committed on or after 4 April 2005² and the responsible officer³ is of the opinion that the offender⁴ has failed without reasonable excuse to comply with any of the community requirements⁵ of the order, he must give the offender a warning⁶ unless either:

- 505 (1) the offender has within the previous 12 months been given such a warning in relation to a failure to comply with any of the community requirements of the order⁷; or
- 506 (2) the officer causes an information to be laid before a justice of the peace⁸ in respect of the failure⁹.

If the responsible officer has given such a warning to the offender in respect of a suspended sentence order¹⁰ and at any time within the 12 months beginning with the date on which the warning was given the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the community requirements of the order¹¹, the officer must cause an information to be laid before a justice of the peace¹² in respect of the failure in question¹³.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7. See also PARA 115 note 9.

4 As to the meaning of 'offender' see PARA 118 note 4.

5 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

6 Such a warning must:

104 (1) describe the circumstances of the failure (Criminal Justice Act 2003 Sch 12 para 4(2)(a));

105 (2) state that the failure is unacceptable (Sch 12 para 4(2)(b)); and

106 (3) inform the offender that, if within the next 12 months he again fails to comply with any requirement of the order, he will be liable to be brought before a court (Sch 12 para 4(2)(c)),

and the responsible officer must, as soon as practicable after the warning has been given, record that fact (Sch 12 para 4(3)).

7 Criminal Justice Act 2003 Sch 12 para 4(1)(a).

8 In relation to any suspended sentence order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference to a justice of the peace is to be read as a reference to the Crown Court: Criminal Justice Act 2003 Sch 12 para 4(4). Where a suspended sentence order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, any reference in Sch 12 para 4 or Sch 12 para 5 to causing an information to be laid before a justice of the peace has effect as a reference either to providing information to the home court with a view to it issuing a citation (if the home court is in Scotland) (Sch 13 para 12(1), (5)(a)) or to making a complaint to a justice of the peace in Northern Ireland (if the home court is in Northern Ireland) (Sch 13 para 12(5)(b)). As to the meaning of 'home court' for these purposes see PARA 131 note 3.

9 Criminal Justice Act 2003 Sch 12 para 4(1)(b).

10 Criminal Justice Act 2003 Sch 12 para 5(1)(a). See the text and notes 1-2.

11 Criminal Justice Act 2003 Sch 12 para 5(1)(b).

12 In relation to any suspended sentence order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in the Criminal Justice Act 2003 Sch 12 para 5(1) to a justice of the peace is to be read as a reference to the Crown Court: Sch 12 para 5(2). In connection with a suspended sentence order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see PARA 130) see also note 8.

13 Criminal Justice Act 2003 Sch 12 para 5(1).

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126. Failure to comply with order made or enforceable by magistrates' court.

If a suspended sentence order¹ relating to an offence committed on or after 4 April 2005² is enforceable by a magistrates' court³ and at any time while the order is in force it appears on information to a justice of the peace that the offender⁴ has failed to comply with any of the community requirements of the order, the justice of the peace may either issue a summons requiring the offender to appear at the place and time specified in it⁵ or, if the information is in writing and on oath, issue a warrant for the offender's arrest⁶. Any such summons or warrant must direct the offender to appear or be brought:

- 507 (1) in the case of a suspended sentence order which is subject to review⁷, before the court responsible for the order⁸; or
- 508 (2) in any other case, before a magistrates' court acting in the local justice area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned⁹.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 Thus these provisions apply to:

- 107 (1) any suspended sentence order made by a magistrates' court (Criminal Justice Act 2003 Sch 12 para 6(1)(a)); and
- 108 (2) any suspended sentence order which was made by the Crown Court and includes a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court (Sch 12 para 6(1)(b)).

As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

4 As to the meaning of 'offender' see PARA 118 note 4.

5 Criminal Justice Act 2003 Sch 12 para 6(2)(a) (Sch 12 para 6(2) amended, and Sch 12 para 6(3)(b) substituted, by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 8(1)-(3)). Where such a summons requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender: Criminal Justice Act 2003 Sch 12 para 6(4).

6 Criminal Justice Act 2003 Sch 12 para 6(2)(b).

7 Any reference in the Criminal Justice Act 2003 Sch 12 to a suspended sentence order being subject to review is a reference to such an order being subject to review in accordance with s 191(1)(b) (see PARA 115) or to a drug rehabilitation requirement of such an order being subject to review in accordance with s 210(1)(b) (see PARA 279): Sch 12 para 2(a).

8 Criminal Justice Act 2003 Sch 12 para 6(3)(a). Any reference to the court responsible for a suspended sentence order which is subject to review is to be construed in accordance with s 191(3) (see PARA 115) or, as the case may be, s 210(2) (see PARA 279): Sch 12 para 2(b).

9 Criminal Justice Act 2003 Sch 12 para 6(3)(b) (as substituted (see note 5); and amended by SI 2005/886). Where a suspended sentence order made or amended in accordance with the Criminal Justice Act 2003 Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, the summons or warrant must direct the offender to appear or be brought, in any case other than that of a suspended sentence order which is subject to review, before a magistrates' court acting in the local justice area concerned: Sch 13 para 12(1), (5A) (Sch 13 para 12(5A) added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 9).

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127. Failure to comply with order enforceable by the Crown Court.

If at any time while a suspended sentence order¹ made by the Crown Court in respect of an offence committed on or after 4 April 2005², which does not include a direction that any failure to comply with the community requirements³ of the order is to be dealt with by a magistrates' court⁴, is in force it appears on information to the Crown Court that the offender has failed to comply with any of the community requirements of the order, the Crown Court may issue a summons requiring the offender to appear at the place and time specified in it⁵ or, if the information is in writing and on oath, issue a warrant for his arrest⁶. Any such summons or warrant must direct the offender to appear or be brought before the Crown Court⁷.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

4 See PARA 126.

5 Criminal Justice Act 2003 Sch 12 para 7(1), (2)(a). Where such a summons requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender: Sch 12 para 7(4).

6 Criminal Justice Act 2003 Sch 12 para 7(2)(b).

7 Criminal Justice Act 2003 Sch 12 para 7(3).

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128. Powers of courts on failure to comply or subsequent conviction.

If a suspended sentence order¹ is in force in respect of an offence committed on or after 4 April 2005² and:

- 509 (1) it is proved to the satisfaction of a court before which an offender³ appears or is brought⁴ that he has failed without reasonable excuse to comply with any of the community requirements⁵ of the order⁶; or
- 510 (2) an offender is convicted of an offence committed during the operational period⁷ of a suspended sentence (other than one which has already taken effect) and either he is so convicted by or before a court having power⁸ to deal with him in respect of the suspended sentence⁹ or he subsequently appears or is brought before a court¹⁰,

the court must consider his case¹¹ and may:

- 511 (a) order that the suspended sentence is to take effect with its original term unaltered¹²;
- 512 (b) order that the sentence is to take effect subject to the substitution for the original term of a lesser term¹³;
- 513 (c) amend the order by imposing more onerous community requirements¹⁴ which the court could include if it were then making the order¹⁵, extending¹⁶ the supervision period¹⁷, or extending¹⁸ the operational period¹⁹.

The court must make an order under head (a) or head (b) above unless it is of the opinion that it would be unjust to do so in view of all the circumstances²⁰; and where it is of that opinion the court must state its reasons²¹.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 As to the meaning of 'offender' see PARA 118 note 4.

4 I.e. under the Criminal Justice Act 2003 Sch 12 para 6 or Sch 12 para 7 (see PARAS 126-127) or by virtue of s 192(6) (see PARA 115).

5 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

6 Criminal Justice Act 2003 Sch 12 para 8(1)(a). In proceedings before the Crown Court any question whether the offender has failed to comply with the community requirements of the suspended sentence order is to be determined by the court and not by the verdict of a jury: Sch 12 para 8(8). An offender who is required by a mental health treatment requirement (see s 207; and PARA 278), a drug rehabilitation requirement (see s 209; and PARA 279) or an alcohol treatment requirement (see s 212; and PARA 281) to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for these purposes as having failed to comply with that requirement on the ground only that he had refused to undergo

any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances: Sch 12 para 10(1).

7 As to the operational period see PARA 110.

8 le under the Criminal Justice Act 2003 Sch 12 para 11, which provides that:

109 (1) an offender may be dealt with under Sch 12 para 8(1)(b) in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought (Sch 12 para 11(1)); and

110 (2) where an offender is convicted by a magistrates' court of any offence and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court, the court may, if it thinks fit, commit him in custody or on bail to the Crown Court and, if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court (Sch 12 para 11(2)).

9 Criminal Justice Act 2003 Sch 12 para 8(1)(b)(i). See Sch 12 para 11; and note 8.

10 Criminal Justice Act 2003 Sch 12 para 8(1)(b)(ii). See Sch 12 para 11; and note 8. In proceedings before the Crown Court any question whether the offender has been convicted of an offence committed during the operational period of the suspended sentence is to be determined by the court and not by the verdict of a jury: Sch 12 para 8(8).

11 Where a suspended sentence order was made by the Crown Court and a magistrates' court would otherwise be required to deal with the offender under head (a), (b) or (c) in the text it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court: Criminal Justice Act 2003 Sch 12 para 8(6). A magistrates' court which deals with an offender's case under this provision must send to the Crown Court:

111 (1) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the community requirements of the suspended sentence order in the respect specified in the certificate (Sch 12 para 8(7)(a)); and

112 (2) such other particulars of the case as may be desirable (Sch 12 para 8(7)(b)),

and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court (Sch 12 para 8(7)).

12 Criminal Justice Act 2003 Sch 12 para 8(2)(a) (amended by SI 2005/643). As from the day on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 s 332, Sch 37 Pt 7 comes into force, the Criminal Justice Act 2003 Sch 12 para 8(2)(a) additionally empowers the court to order that the suspended sentence is to take effect with its custodial period unaltered: Sch 12 para 8(2)(a) (as so amended). At the date at which this volume states the law no day had been appointed for the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 to take effect. As to the meaning of 'custodial period' see the Criminal Justice Act 2003 s 181(3)(a); and PARA 98. See also Sch 12 para 8(4A); and PARA 120. In connection with the activation of the original term following failure to comply with community requirements see *R v Sheppard* [2008] EWCA Crim 799, [2008] 2 Cr App Rep (S) 524, [2008] All ER (D) 54 (May).

When making an order under the Criminal Justice Act 2003 Sch 12 para 8(2)(a) or (b) that a sentence is to take effect (with or without any variation), the court may order that the sentence is to take effect immediately or that the term of the sentence is to commence on the expiry of another term of imprisonment passed on the offender by that or another court: Sch 12 para 9(1)(b) (Sch 12 para 9(1) amended by SI 2005/643). The power to make such an order has effect subject to the restriction under the Criminal Justice Act 2003 s 265 on consecutive sentences for released prisoners (see PARA 30): Sch 12 para 9(2). As from the day on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 comes into force (see above), the court must also make a custody plus order: Criminal Justice Act 2003 Sch 12 para 9(1)(a) (as so amended). As to custody plus orders see PARA 98 et seq.

Where a court deals with an offender under Sch 12 para 8(2), the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted: Sch 12 para 8(5).

For the purpose of any enactment conferring rights of appeal in criminal cases, any order made by the court under head (a) or head (b) above is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed: Sch 12 para 9(3).

13 Criminal Justice Act 2003 Sch 12 para 8(2)(b) (amended by SI 2005/643). As from the day on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 comes into force (see note 12), the Criminal Justice Act 2003 Sch 12 para 8(2)(b) additionally empowers the court to order that the suspended sentence is to

take effect subject to the substitution for the original term of a lesser term complying with s 181(2) (see PARA 98) or the substitution for the original custodial period of a lesser custodial period complying with s 181(5), (6) (see PARA 98): Sch 12 para 8(2)(a) (as so amended). See further note 12.

14 As to the meaning of 'community requirements' see the Criminal Justice Act 2003 s 189(7)(c); and PARAS 110, 112.

15 Criminal Justice Act 2003 Sch 12 para 8(2)(c)(i). See note 12. A court may not under this provision amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended: Sch 12 para 10(2).

Where the court decides to amend a suspended sentence order rather than activate the custodial sentence, it should give serious consideration to extending the supervision or operational periods (within statutory limits) rather than making the requirements more onerous: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) para 2.2.22.

16 Ie subject to the Criminal Justice Act 2003 s 189(3), (4) (see PARA 110).

17 Criminal Justice Act 2003 Sch 12 para 8(2)(c)(ii). See notes 12, 15.

18 Ie subject to the Criminal Justice Act 2003 s 189(3) (see PARA 110).

19 Criminal Justice Act 2003 Sch 12 para 8(2)(c)(iii). See notes 12, 15.

20 Ie including the extent to which the offender has complied with the community requirements of the suspended sentence order (Criminal Justice Act 2003 Sch 12 para 8(4)(a)) and, in a case falling within Sch 12 para 8(1)(b) (see head (2) in the text), the facts of the subsequent offence (Sch 12 para 8(4)(b)). In this regard see further *R v Sheppard* [2008] EWCA Crim 799, [2008] 2 Cr App Rep (S) 524, [2008] All ER (D) 54 (May); *R v Zeca* [2009] EWCA Crim 133, [2009] 2 Cr App Rep (S) 460, [2009] All ER (D) 163 (May).

21 Criminal Justice Act 2003 Sch 12 para 8(3).

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129. Procedure where court convicting of further offence does not deal with suspended sentence.

If it appears to the Crown Court, where that court has jurisdiction¹ or to a justice of the peace having jurisdiction²:

- 514 (1) that an offender³ has been convicted in the United Kingdom⁴ of an offence committed during the operational period⁵ of a suspended sentence⁶ ordered in respect of an offence committed on or after 4 April 2005⁷; and
- 515 (2) that he has not been dealt with in respect of the suspended sentence⁸,

that court or justice may issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his arrest⁹.

Where:

- 516 (a) an offender is convicted in Scotland or Northern Ireland of an offence¹⁰; and
- 517 (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales in relation to an offence committed on or after 4 April 2005¹¹,

the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed¹².

1 Jurisdiction may be exercised for these purposes: (1) if the suspended sentence was passed by the Crown Court, by that court (Criminal Justice Act 2003 Sch 12 para 12(2)(a)); and (2) if it was passed by a magistrates' court, by a justice acting in the local justice area for which that court acted (Sch 12 para 12(2)(b) (amended by SI 2005/886)).

2 In accordance with the Criminal Justice Act 2003 Sch 12 para 12(2) (see note 1).

3 As to the meaning of 'offender' see PARA 118 note 4.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 As to the operational period see PARA 110.

6 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 7.

7 Criminal Justice Act 2003 Sch 12 para 12(1)(a). As to 4 April 2005, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

8 Criminal Justice Act 2003 Sch 12 para 12(1)(b).

9 Criminal Justice Act 2003 Sch 12 para 12(1). Such a summons or warrant must direct the offender to appear or be brought before the court by which the suspended sentence was passed: Sch 12 para 12(5).

10 Criminal Justice Act 2003 Sch 12 para 12(3)(a).

11 Criminal Justice Act 2003 Sch 12 para 12(3)(b).

12 Criminal Justice Act 2003 Sch 12 para 12(3). Unless he is acting in consequence of such a notice, a justice of the peace may not issue a summons under Sch 12 para 12 except on information and may not issue a warrant under these provisions except on information in writing and on oath: Sch 12 para 12(4).

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(iv) Transfer to Scotland or Northern Ireland

130. Powers to transfer.

Where the court considering the making of a suspended sentence order¹ in respect of an offence committed on or after 4 April 2005² is satisfied that the offender resides in Scotland or Northern Ireland, or will reside there when the order comes into force, it may not so make an order unless it appears to the court that suitable arrangements for the offender's supervision can be made by the local authority in Scotland in whose area he resides, or will be residing when the order comes into force, or by the Probation Board for Northern Ireland, as the case may be³, and that in the case of an order imposing:

- 518 (1) an unpaid work requirement⁴;
- 519 (2) an activity requirement⁵;
- 520 (3) a programme requirement⁶;
- 521 (4) a mental health treatment requirement⁷;
- 522 (5) a drug rehabilitation requirement⁸;
- 523 (6) an alcohol treatment requirement⁹;
- 524 (7) (in Northern Ireland) an attendance centre requirement¹⁰; or
- 525 (8) an electronic monitoring requirement¹¹,

arrangements exist for persons to comply with such a requirement in the locality in Scotland or petty sessions district in Northern Ireland, as the case may be, in which the offender resides, or will be residing when the order comes into force, and that provision can be made for him to comply with the requirement under those arrangements¹².

Where:

- 526 (a) the appropriate court for the purposes of its powers of amendment by reason of change of residence¹³ is satisfied that an offender in respect of whom a suspended sentence order is in force in respect of an offence committed on or after 4 April 2005 proposes to reside or is residing in Scotland or Northern Ireland, as the case may be¹⁴; and
- 527 (b) it appears to the court that the conditions which determine whether a transfer order may be made¹⁵ are satisfied¹⁶,

the power of the court to amend the order¹⁷ includes power to amend it by requiring it to be complied with in Scotland or Northern Ireland, as the case may be, and the offender to be supervised in accordance with such arrangements as can be made by the local authority in Scotland in whose area he resides, or will be residing when the order or amendment comes into force, or by the Probation Board for Northern Ireland, as the case may be¹⁸.

A suspended sentence order so made¹⁹ must:

- 528 (i) specify the local authority area in Scotland, or the petty sessions district in Northern Ireland, as the case may be, in which the offender resides or will be residing when the order or amendment comes into force²⁰; and

- 529 (ii) require the local authority for that area in Scotland or the Probation Board for Northern Ireland, as the case may be, to appoint or assign an officer who will be responsible for discharging in relation to him the functions conferred²¹ on responsible officers²².

Where a court so makes or amends a suspended sentence order in respect of an offence committed on or after 4 April 2005 it must provide the relevant documents²³ to the local authority for the area in Scotland specified in the order or the Probation Board for Northern Ireland, as the case may be²⁴, and to the sheriff court in Scotland having jurisdiction in the locality, or the court of summary jurisdiction acting for the petty sessions district in Northern Ireland, as the case may be, in which the offender resides or proposes to reside²⁵.

1 As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 Criminal Justice Act 2003 Sch 13 paras 1(1)(b), 6(1)(b). In Sch 13 Pt 1 (paras 2-5), 'local authority' means a council constituted under the Local Government etc (Scotland) Act 1994; and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act: Criminal Justice Act 2003 Sch 13 para 5.

The court may not provide for an order relating to Scotland or Northern Ireland made in accordance with Sch 13 para 1 or Sch 13 para 6 (as the case may be) to be subject to review under s 191 (see PARA 115) or s 210 (see PARA 280); and where an order which is subject to review under either of those provisions is amended in accordance with Sch 13 para 1 or Sch 13 para 6 (as the case may be), it ceases to be so subject: Sch 13 paras 1(6), 6(5).

4 Criminal Justice Act 2003 Sch 13 paras 1(2)(a), 6(2)(a). As to unpaid work requirements see s 199; and PARA 271.

5 Criminal Justice Act 2003 Sch 13 paras 1(2)(b), 6(2)(b). As to activity requirements see s 201; and PARA 272.

6 Criminal Justice Act 2003 Sch 13 paras 1(2)(c), 6(2)(c). As to programme requirements see s 202; and PARA 273.

7 Criminal Justice Act 2003 Sch 13 paras 1(2)(d), 6(2)(d). As to mental health treatment requirements see s 207; and PARA 278.

8 Criminal Justice Act 2003 Sch 13 paras 1(2)(e), 6(2)(e). As to drug rehabilitation requirements see s 209; and PARA 279.

9 Criminal Justice Act 2003 Sch 13 paras 1(2)(f), 6(2)(f). As to alcohol treatment requirements see s 212; and PARA 281.

10 Criminal Justice Act 2003 Sch 13 para 6(2)(g). As to attendance centre requirements in Northern Ireland see s 214; and PARA 283. The court may not by virtue of these provisions require an attendance centre requirement to be complied with in Scotland: Sch 13 para 1(5).

11 Criminal Justice Act 2003 Sch 13 paras 1(2)(g), 6(2)(h). As to electronic monitoring requirements see s 215; and PARA 284.

12 Criminal Justice Act 2003 Sch 13 paras 1(1)(a), 6(1)(a).

13 As to these powers see the Criminal Justice Act 2003 Sch 12 para 14; and PARA 120.

14 Criminal Justice Act 2003 Sch 13 paras 1(3)(a), 6(3)(a).

15 Ie the conditions set out in the Criminal Justice Act 2003 Sch 13 paras 1(1), 6(1) (see the text and notes 1-12).

16 Criminal Justice Act 2003 Sch 13 paras 1(3)(b), 6(3)(b).

17 Ie under the Criminal Justice Act 2003 Sch 12 (see PARA 118 et seq).

18 Criminal Justice Act 2003 Sch 13 paras 1(3), (4), 6(3), (4). The arrangements referred to in the text are those set out in Sch 13 paras 1(1)(b), 6(1)(b) (see the text and note 3). The court may not by virtue of these provisions require an attendance centre requirement to be complied with in Scotland: Sch 13 para 1(5).

19 Ie made in accordance with the Criminal Justice Act 2003 Sch 13 para 1 or Sch 13 para 6 (see the text and notes 1-18).

20 Criminal Justice Act 2003 Sch 13 paras 2(a), 7(a).

21 Ie the functions conferred by the Criminal Justice Act 2003 Pt 12 (ss 142-305).

22 Criminal Justice Act 2003 Sch 13 paras 2(b), 7(b). Section 216 (local justice area to be specified: see PARAS 98, 100, 112, 171) does not apply to an order so made or amended: Sch 13 paras 2, 7 (amended by SI 2005/886).

23 For these purposes 'relevant document' means a copy of the order as made or amended (Criminal Justice Act 2003 Sch 13 paras 3(2)(a), 8(2)(a)) and such other documents and information relating to the case as the court making or amending the order considers likely to be of assistance (Sch 13 paras 3(2)(b), 8(2)(b)).

24 Criminal Justice Act 2003 Sch 13 paras 3(1)(a), 8(1)(a).

25 Criminal Justice Act 2003 Sch 13 paras 3(1)(b), 8(1)(b). The provisions of s 219(1)(b)-(d) (which relate to the provision of copies: see PARA 100) do not apply in relation to an order so made or amended: Sch 13 paras 3(1), 8(1).

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131. After transfer to Scotland or Northern Ireland.

If at any time while a suspended sentence order¹ made in respect of an offence committed on or after 4 April 2005² is in force in respect of an offender residing in Scotland or Northern Ireland it appears to the home court³, either on information from (if that court is in Scotland)⁴ or upon a complaint made by (if that court is in Northern Ireland)⁵ the relevant officer⁶, that the offender has failed without reasonable excuse to comply with any of the community requirements of the order⁷, the home court may issue a citation (if it is in Scotland) or summons (if it is in Northern Ireland) requiring the offender to appear before it at the time specified in the citation or summons⁸, and if he does not appear in answer to the citation or summons it may issue a warrant for the offender's arrest⁹. The court before which an offender appears or is brought by virtue of these requirements must either determine whether the offender has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order¹⁰ or require the offender to appear before the original court¹¹, and if the home court determines that the offender has failed without reasonable excuse to comply with any of the community requirements of the order¹² it must require the offender to appear before the original court¹³. The home court may also exercise any power of amendment of a suspended sentence order¹⁴ as if it were the original court¹⁵. Where the home court proposes to exercise the power of amendment¹⁶, otherwise than on the application of the offender, it must issue a citation (if it is in Scotland) or summons (if it is in Northern Ireland) requiring the offender to appear before it¹⁷, and if he does not appear in answer to the citation or summons it may issue a warrant for the offender's arrest¹⁸. However, this does not apply to any order cancelling any community requirement of a suspended sentence order¹⁹.

Where an application is made²⁰ to the home court for the amendment of a suspended sentence order the home court may (instead of dealing with the application) require the offender to appear before the original court²¹.

No court may amend or further amend a suspended sentence order unless it appears to the court that the conditions which determine whether a transfer order may be made²² are satisfied in relation to any requirement to be imposed²³.

On the making of an order amending a suspended sentence order the court must provide copies of the amending order to the offender and the relevant officer²⁴.

Where the home court is satisfied that the offender is residing or proposes to reside in England and Wales²⁵ it may, and on the application of the relevant officer must, amend the suspended sentence order by requiring it to be complied with in England and Wales²⁶.

1 le a suspended sentence order made or amended in accordance with the Criminal Justice Act 2003 Sch 13 para 1 or Sch 13 para 6 (see PARA 130). As to the meanings of 'suspended sentence' and 'suspended sentence order' see PARA 110: see further note 2.

2 As to this date, and as to the applicability and operation of suspended sentences in respect of offences committed on or after this date, see PARA 110 text and notes 1-7. In connection with offences committed before this date see PARAS 132-138.

3 For these purposes, 'home court' means:

113 (1) if the offender resides in Scotland, or will be residing there at the relevant time, the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside (Criminal Justice Act 2003 Sch 13 para 11); and

114 (2) if he resides in Northern Ireland, or will be residing there at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside (Sch 13 para 11).

'Relevant time' means the time when the order or the amendment to it comes into force: Sch 13 para 11. As to the meanings of 'local authority' and 'local authority area' see PARA 130 note 3.

4 Criminal Justice Act 2003 Sch 13 para 13(1)(a).

5 Criminal Justice Act 2003 Sch 13 para 13(1)(b).

6 'Relevant officer' means:

115 (1) where the order specifies a local authority area in Scotland, the local authority officer appointed or assigned under Sch 13 para 2(b) (see PARA 130) (Sch 13 para 11); and

116 (2) where the order specifies a petty sessions district in Northern Ireland, the probation officer appointed or assigned under Sch 13 para 7(b) (see PARA 130) (Sch 13 para 11).

7 As to the community requirements of a suspended sentence order see PARA 110.

8 Criminal Justice Act 2003 Sch 13 para 13(2)(a)(i), (b)(i). The Summary Jurisdiction (Process) Act 1881 s 4 (which provides, among other things, for service in England and Wales of Scottish citations or warrants) applies to any citation or warrant issued under the Criminal Justice Act 2003 Sch 13 para 13(2)(a) or Sch 13 para 15(3) (a) (see the text and notes 16-18) as it applies to a citation or warrant granted under the Criminal Procedure (Scotland) Act 1995 s 134: Criminal Justice Act 2003 Sch 13 para 22(1). A summons issued by a court in Northern Ireland under Sch 13 para 13(2)(b) or Sch 13 para 15(3)(a) may, in such circumstances as may be prescribed by rules of court, be served in England, Wales or Scotland: Sch 13 para 22(2).

9 Criminal Justice Act 2003 Sch 13 para 13(2)(a)(ii), (b)(ii).

10 Criminal Justice Act 2003 Sch 13 para 14(1)(a).

11 Criminal Justice Act 2003 Sch 13 para 14(1)(b). 'Original court' means the court in England and Wales which made or last amended the order: Sch 13 para 11. Where a suspended sentence order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, no court in England and Wales may exercise any power in relation to any failure by the offender to comply with any community requirement of the order unless the offender has been required in accordance with Sch 13 para 14(1)(b) or Sch 13 para 14(2)(a) (see the text and notes 12-13) to appear before that court: Sch 13 para 12(1), (8)(a).

12 An offender who is required by a mental health treatment requirement (see the Criminal Justice Act 2003 s 207; and PARA 278), a drug rehabilitation requirement (see s 209; and PARA 279) or an alcohol treatment requirement (see s 212; and PARA 281) to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for these purposes as having failed to comply with that requirement on the ground only that he has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances: Sch 13 para 14(3).

13 Criminal Justice Act 2003 Sch 13 para 14(2)(a). See note 10. Where an offender is required by virtue of this provision to appear before the original court, the home court must send to the original court a certificate certifying that the offender has failed without reasonable excuse to comply with the requirements of the order in the respect specified (Sch 13 para 14(6)(a)) and such a certificate signed by the clerk of the home court is admissible before the original court as conclusive evidence of the matters specified in it (Sch 13 para 14(6)(b)). When the offender appears before the original court, Sch 12 para 8 (see PARA 128) applies as if it had already been proved to the satisfaction of the original court that the offender failed without reasonable excuse to comply with such of the community requirements of the order as may have been determined: Sch 13 para 14(2) (b). The evidence of one witness is sufficient for these purposes: Sch 13 para 14(4).

14 In any power under the Criminal Justice Act 2003 Sch 12 Pt 3 (paras 13-22) (see PARAS 118-124), except that conferred by Sch 12 para 15(4) (see PARA 119): Sch 13 para 15(1). Where Sch 12 para 15(4) applies the home court must require the offender to appear before the original court: Sch 13 para 15(2). Where a suspended sentence order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see PARA 130) is in force in respect of an offender, no court in England and Wales may exercise any power under Sch 12 Pt 3

unless the offender has been required in accordance with Sch 13 para 15(2) or Sch 13 para 16 (see the text and notes 20-21) to appear before that court: Sch 13 para 12(8)(b).

15 Criminal Justice Act 2003 Sch 13 para 15(1).

16 Ie the power conferred by the Criminal Justice Act 2003 Sch 12 para 15(1) (see PARA 119).

17 Criminal Justice Act 2003 Sch 13 para 15(3)(a)(i), (b)(i). See note 8.

18 Criminal Justice Act 2003 Sch 13 para 15(3)(a)(ii), (b)(ii).

19 Criminal Justice Act 2003 Sch 13 para 15(4).

20 Ie by virtue of the Criminal Justice Act 2003 Sch 13 para 15 (see the text and notes 14-19).

21 Criminal Justice Act 2003 Sch 13 para 16.

22 Ie the conditions set out in the Criminal Justice Act 2003 Sch 13 para 1(1)(a) or Sch 13 para 6(1)(a) (see PARA 130).

23 Criminal Justice Act 2003 Sch 13 para 17. Schedule 13 para 17 does not apply to any amendment made by Sch 13 para 20(2) (see the text and note 25): Sch 13 para 17. The provisions of Sch 13 paras 1-17 have effect in relation to any amendment of a suspended sentence order by any court as they have effect in relation to the amendment of such an order by virtue of Sch 13 para 1(3) or Sch 13 para 6(3) (see PARA 130): Sch 13 para 18.

24 Criminal Justice Act 2003 Sch 13 para 19(a). In the case of an amending order which substitutes a new local authority area or petty sessions district, Sch 13 paras 2, 3 (see PARA 130), or as the case may be Sch 13 paras 7, 8 (see PARA 130), have effect in relation to the order as they have effect in relation to an order made or amended in accordance with Sch 13 para 1 or Sch 13 para 6 (see PARA 130): Sch 13 para 19(b).

25 Criminal Justice Act 2003 Sch 13 para 20(1).

26 Criminal Justice Act 2003 Sch 13 para 20(2). The court may not amend under these provisions a suspended sentence order which contains requirements which, in the opinion of the court, cannot be complied with in the local justice area in which the offender is residing or proposes to reside unless, in accordance with Sch 12 para 15 (see PARA 119), it either cancels those requirements or substitutes for them other requirements which can be complied with if the offender resides in that area: Sch 13 para 20(3) (Sch 13 para 20(3), (4), (6) (a), (b) amended by SI 2005/886). The court may not amend under these provisions any suspended sentence order imposing a programme requirement unless it appears to the court that the accredited programme specified in the requirement is available in the local justice area in England and Wales in which the offender is residing or proposes to reside: Sch 13 para 20(4) (as so amended). As to programme requirements see s 202; and PARA 273.

The suspended sentence order as amended under Sch 13 para 20 must specify the local justice area in which the offender resides or proposes to reside: Sch 13 para 20(5).

On the making under Sch 13 para 20 of an order amending a suspended sentence order, the home court must:

- 117 (1) provide copies of the amending order to the offender, the relevant officer and the local probation board acting in the new local justice area (Sch 13 para 20(6)(a) (as so amended)); and
- 118 (2) provide the magistrates' court acting in that area with a copy of the amending order and such other documents and information relating to the case as the home court considers likely to be of assistance to the court acting in that area in the exercise of its functions in relation to the order (Sch 13 para 20(6)(b) (as so amended)).

Where an order has been amended under Sch 13 para 20, the provisions of Sch 13 paras 1-19 cease to apply to the order as amended: Sch 13 para 20(7).

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(2) OFFENCES COMMITTED BEFORE 4 APRIL 2005

(i) Making the Suspended Sentence Order

132. Powers of court.

Where in respect of an offence committed before 4 April 2005¹ a court² passes a sentence of imprisonment³ for a term of not more than two years⁴ the court may⁵ order that the sentence will not take effect unless, during a period specified in the order (the 'operational period'⁶), the offender commits in Great Britain⁷ another offence punishable with imprisonment⁸ and thereafter a court having power to do so orders⁹ that the original sentence is to take effect¹⁰. A sentence to which such an order relates is known as a 'suspended sentence'¹¹. A court may not, however, deal with an offender by means of a suspended sentence unless it is of the opinion that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence and that the exercise of that power can be justified by the exceptional circumstances of the case¹².

A court which passes a suspended sentence on any person for an offence committed before 4 April 2005 must consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine¹³ or the making of a compensation order¹⁴; however the court may not impose a community sentence¹⁵ in that person's case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court¹⁶.

1 The Powers of Criminal Courts (Sentencing) Act 2000 ss 118-125 (see the text and notes 2-16; and PARAS 133-138) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). Note that there is no power to suspend a sentence of detention in a young offender institution passed for an offence committed before 4 April 2005. In connection with offences committed after 4 April 2005 see PARAS 110-131.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the meaning of 'sentence of imprisonment' see PARA 11 note 3.

4 For the purposes of any reference in the Powers of Criminal Courts (Sentencing) Act 2000 Pt V Ch V (ss 118-125), however expressed, to the term of imprisonment to which a person has been sentenced, consecutive terms and terms which are wholly or partly concurrent are, unless the context otherwise requires, to be treated as a single term: s 125(1) (repealed with savings: see note 1).

5 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 118(4) (see the text and note 12).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 118(3) (repealed with savings: see note 1). The operational period must be a period of not less than one year nor more than two years beginning with the date of the order: s 118(2) (as so repealed with savings).

7 As to the meaning of 'Great Britain' see PARA 9 note 2.

8 As to the meaning of 'offence punishable with imprisonment' see PARA 6 note 5.

9 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 119 (see PARA 137). On passing a suspended sentence the court must explain to the offender in ordinary language his liability under s 119 if

during the operational period he commits an offence punishable with imprisonment: s 118(7) (repealed with savings: see note 1). Subject to any provision to the contrary contained in the Criminal Justice Act 1967, the Powers of Criminal Courts (Sentencing) Act 2000 or any other enactment passed or instrument made under any enactment after 31 December 1967, a suspended sentence which has not taken effect under the Powers of Criminal Courts (Sentencing) Act 2000 s 119 is to be treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments except any enactment or instrument which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment (s 118(8) (a) (as so repealed with savings)); and where a suspended sentence has so taken effect, the offender must be treated for the purposes of the enactments and instruments excepted by s 118(8)(a) as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under s 118 expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution (s 118(8)(b) (as so repealed with savings)).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 118(1), (3) (repealed with savings: see note 1).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 118(3) (repealed with savings: see note 1).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 118(4) (repealed with savings: see note 1).

13 As to the powers of a court to impose a fine see PARA 139 et seq.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 118(5) (repealed with savings: see note 1). As to compensation orders see PARA 375 et seq.

15 As to community sentences see PARA 163 et seq.

16 Powers of Criminal Courts (Sentencing) Act 2000 s 118(6) (repealed with savings: see note 1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/5. SUSPENDED SENTENCES OF IMPRISONMENT AND DETENTION/(2) OFFENCES COMMITTED BEFORE 4 APRIL 2005/(i) Making the Suspended Sentence Order/133. Suspended sentence supervision orders.

133. Suspended sentence supervision orders.

A 'suspended sentence supervision order' is an order placing an offender under the supervision of a supervising officer¹ for a period specified in the order², and a court³ which passes on an offender a suspended sentence⁴ for a term of more than six months⁵ for a single offence committed before 4 April 2005⁶ may make such an order in respect of that offender⁷. An offender in respect of whom a supervision order is in force must keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and must notify him of any change of address⁸.

A suspended sentence supervision order ceases to have effect if before the end of the period specified in it a court orders⁹ that a suspended sentence passed in the proceedings in which the order was made is to have effect¹⁰, or the order is revoked¹¹ or replaced¹².

1 The supervising officer must be an officer of a local probation board appointed for or assigned to the area for the time being specified in the order (whether under the Powers of Criminal Courts (Sentencing) Act 2000 s 122(2) or by virtue of s 124(3) (power to amend order: see PARA 134)); s 122(2) (repealed with savings (see note 6); amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4). As to local probation boards and providers of probation services see PARA 733 et seq.

2 As to the period which may be specified see note 7.

3 As to the meaning of 'court' see PARA 1 note 1.

4 As to the meaning of 'suspended sentence' see PARA 132.

5 As to terms of imprisonment see PARA 132 note 4. The Secretary of State may by order direct that the Powers of Criminal Courts (Sentencing) Act 2000 s 122(1) be amended by substituting, for the number of months there specified (ie six months) such other number (not more than six) as the order may specify, or make in s 122(1) the repeals necessary to enable a court to make a suspended sentence supervision order in the case of any suspended sentence, whatever the length of the term: s 122(6) (repealed with savings: see note 6). At the date at which this volume states the law no such order had been made.

6 The Powers of Criminal Courts (Sentencing) Act 2000 ss 118-125 (see the text and notes 7-12; PARA 132; and PARAS 134-138) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). In connection with offences committed after 4 April 2005 see PARAS 110-131.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 122(1) (repealed with savings: see note 6). The period specified in the order may not exceed the operational period of the suspended sentence: s 119(1) (as so repealed with savings). As to the operational period of a suspended sentence see PARA 132 note 6. The order must specify the petty sessions area in which the offender resides or will reside: s 122(2) (as so repealed with savings). See also s 122(8); and PARA 137.

On making a suspended sentence supervision order, the court must explain its effect to the offender in ordinary language (s 122(4) (as so repealed with savings)), and must forthwith give copies of the order to an officer of a local probation board assigned to the court, who must give a copy to the offender and to the supervising officer (s 122(5) (as so repealed with savings; amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4)). The court must also, except where it itself acts for the petty sessions area specified in the order, send to the justices' chief executive for that area a copy of the order and such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order: s 122(6) (as so repealed with savings).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 122(3) (repealed with savings: see note 6). As to a failure to comply with these requirements see s 123; and PARA 136.

9 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 119 (see PARA 137).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 124(5)(a) (repealed with savings: see note 6).

11 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 124(1) (see PARA 135).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 124(5)(b) (repealed with savings: see note 6). As to the replacement of orders see s 122(8); and PARA 137.

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(ii) Amending or Revoking the Order

134. Amendment of suspended sentence supervision order by reason of change of residence.

If a magistrates' court acting in the local justice area for the time being specified in a suspended sentence supervision order¹ made in connection with an offence committed before 4 April 2005² is satisfied that the offender proposes to change, or has changed, his residence from that local justice area to another local justice area the court may, and on the application of the supervising officer³ must, amend the order by substituting the other local justice area for the area specified in the order⁴.

1 As to the meaning of 'suspended sentence supervision order' see PARA 133. As to the meaning of 'suspended sentence' see PARA 132. Where a magistrates' court dealing with an offender under the Powers of Criminal Courts (Sentencing) Act 2000 s 123 (see PARA 136) would not otherwise have the power to amend the suspended sentence supervision order under s 124(3), that provision has effect as if the reference to a magistrates' court acting in the local justice area for the time being specified in the suspended sentence supervision order were a reference to the court dealing with the offender: s 123(5) (repealed with savings (see note 2); added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 3).

2 The Powers of Criminal Courts (Sentencing) Act 2000 ss 118-125 (see the text and notes 3-4; PARAS 132-133; and PARAS 135-138) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c) (xii), (3)). In connection with offences committed after 4 April 2005 see PARAS 110-131.

3 As to the supervising officer see PARA 133.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 124(3) (repealed with savings (see note 2); amended by SI 2005/886). Where a suspended sentence supervision order is so amended the court must send to the designated officer for the new area specified in the order a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Powers of Criminal Courts (Sentencing) Act 2000 s 124(4) (as so repealed with savings; amended by SI 2005/886).

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135. Revocation of suspended sentence supervision order.

A suspended sentence supervision order¹ made in connection with an offence committed before 4 April 2005² may be revoked on the application of the supervising officer³ or the offender:

530 (1) if it was made by the Crown Court⁴ and includes a direction reserving the power of revoking it to that court, by the Crown Court⁵; and

531 (2) in any other case, by a magistrates' court acting in the local justice area for the time being specified in the order⁶.

1 As to the meaning of 'suspended sentence supervision order' see PARA 133. As to the meaning of 'suspended sentence' see PARA 132.

2 The Powers of Criminal Courts (Sentencing) Act 2000 ss 118-125 (see the text and notes 3-6; PARAS 132-134; and PARAS 136-138) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c) (xii), (3)). In connection with offences committed after 4 April 2005 see PARAS 110-131.

3 As to the supervising officer see PARA 133.

4 Where a suspended sentence supervision order has been made on appeal, for these purposes it is deemed:

119 (1) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court (Powers of Criminal Courts (Sentencing) Act 2000 s 124(2)(a) (repealed with savings: see note 2));

120 (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (s 124(2)(b) (as so repealed with savings)).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 124(1)(a) (repealed with savings: see note 2).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 124(1)(b) (repealed with savings (see note 2); amended by SI 2005/886).

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(iii) Breach of Order and Effect of Further Conviction

136. Breach of requirement of suspended sentence supervision order.

If, at any time while a suspended sentence supervision order¹ made in connection with an offence committed before 4 April 2005² is in force in respect of an offender, it appears on information to a justice of the peace that the offender has failed to keep in touch with his supervising officer³, the justice may issue a summons requiring the offender to appear at the place and time specified in it⁴ or, if the information is in writing and on oath, issue a warrant for his arrest⁵. Any such summons or warrant must direct the offender to appear or be brought:

- 532 (1) before a magistrates' court for the petty sessions area in which the offender resides⁶; or
- 533 (2) if it is not known where the offender resides, before a magistrates' court acting for the petty sessions area for the time being specified in the suspended sentence supervision order⁷.

If it is proved to the satisfaction of the court before which an offender appears or is so brought that he has failed to keep in touch with his supervising officer⁸ the court may, without prejudice to the continuance of the order, impose on him a fine⁹.

¹ As to the meaning of 'suspended sentence supervision order' see PARA 133. As to the meaning of 'suspended sentence' see PARA 132.

² The Powers of Criminal Courts (Sentencing) Act 2000 ss 118-125 (see the text and notes 3-9; PARAS 132-135; and PARAS 137-138) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c) (xii), (3)). In connection with offences committed after 4 April 2005 see PARAS 110-131.

³ He has failed to comply with any of the requirements of the Powers of Criminal Courts (Sentencing) Act 2000 s 122(3); and PARA 133.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 s 123(1)(a) (repealed with savings: see note 2).

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 123(1)(b) (repealed with savings: see note 2).

⁶ Powers of Criminal Courts (Sentencing) Act 2000 s 123(2)(a) (s 123(2) repealed with savings (see note 2); substituted by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 3). See further the Powers of Criminal Courts (Sentencing) Act 2000 s 123(5); and PARA 134.

⁷ Powers of Criminal Courts (Sentencing) Act 2000 s 123(2)(b) (repealed with savings (see note 2); as substituted (see note 6)).

⁸ He has failed without reasonable cause to comply with any of the requirements of the Powers of Criminal Courts (Sentencing) Act 2000 s 122(3); and PARA 133.

⁹ Powers of Criminal Courts (Sentencing) Act 2000 s 123(3) (repealed with savings: see note 2). A fine so imposed must not exceed £1,000 and is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: s 123(3), (4) (as so repealed with savings).

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137. Powers of court on subsequent conviction.

Where an offender is convicted of an offence punishable with imprisonment committed during the operational period¹ of a suspended sentence² passed in connection with an offence committed before 4 April 2005³ and either he is so convicted by or before a court having power⁴ to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such a court⁵, then, unless the sentence has already taken effect, that court must consider his case and deal with him by one of the following methods:

- 534 (1) the court may order that the suspended sentence take effect with the original term unaltered⁶;
- 535 (2) the court may order that the sentence take effect with the substitution of a lesser term for the original term⁷;
- 536 (3) the court may by order vary the original order⁸ by substituting for the period specified in that order a period ending not later than two years from the date of the variation⁹; or
- 537 (4) the court may make no order with respect to the suspended sentence¹⁰.

The court must make an order under head (1) above unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the facts of the subsequent offence; and where it is of that opinion the court must state its reasons¹¹.

1 As to the operational period see PARA 132.

2 As to the meaning of 'suspended sentence' see PARA 132.

3 The Powers of Criminal Courts (Sentencing) Act 2000 ss 118-125 (see the text and notes 4-11; PARAS 132-136; and PARA 138) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). In connection with offences committed after 4 April 2005 see PARAS 110-131.

4 ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 120, which provides that:

- 121 (1) an offender may be dealt with in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought (s 120(1) (repealed with savings: see note 3)); and
- 122 (2) where an offender is convicted by a magistrates' court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court the court may, if it thinks fit, commit him in custody or on bail to the Crown Court, and if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court (s 120(2) (as so repealed with savings)).

For these purposes a suspended sentence passed on an offender on appeal is treated as having been passed by the court by which he was originally sentenced: s 120(3) (as so repealed with savings).

5 In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Crown Court, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence is to be determined by the court and not by the verdict of a jury: Powers of Criminal Courts (Sentencing) Act 2000 s 119(5) (repealed with savings: see note 3).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 119(1)(a) (repealed with savings: see note 3). Where a court orders that a suspended sentence take effect, with or without any variation of the original term, it may order that that sentence take effect immediately or that the term of that sentence commence on the expiry of another term of imprisonment passed on the offender by that or another court: s 119(3) (as so repealed with savings). The power to make such an order has effect subject to s 84 (restriction on consecutive sentences for released prisoners (repealed)): s 119(4) (as so repealed with savings).

Where a court deals with an offender under s 119 in respect of a suspended sentence the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted: s 119(6) (as so repealed with savings).

For the purpose of any enactment conferring rights of appeal in criminal cases, any order made by a court with respect to a suspended sentence is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed: s 119(8) (as so repealed with savings).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 119(1)(b) (repealed with savings: see note 3). See note 6.

8 le the order under the Powers of Criminal Courts (Sentencing) Act 2000 s 118(1) (see PARA 132).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 119(1)(c) (repealed with savings: see note 3). Where under s 119 a court deals with an offender in respect of a suspended sentence by varying the operational period of the sentence or by making no order with respect to the sentence, the court may make a suspended sentence supervision order in respect of the offender:

123 (1) in place of any such order made when the suspended sentence was passed (s 122(8)(a) (as so repealed with savings)); or

124 (2) if the court which passed the sentence could have made such an order but did not do so (s 122(8)(b) (as so repealed with savings)); or

125 (3) if that court could not then have made such an order but would have had power to do so if s 122(1) (see PARA 133) had then had effect as it has effect at the time when the offender is dealt with under s 119 (s 122(8)(c) (as so repealed with savings)).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 119(1)(d) (repealed with savings: see note 3). Where on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the appropriate officer of the court must record that fact: s 119(7) (as so repealed with savings). See note 9.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 119(2) (repealed with savings: see note 3).

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138. Procedure where court convicting of further offence does not deal with suspended sentence.

If it appears to the Crown Court, where that court has jurisdiction¹ or to a justice of the peace having jurisdiction²:

- 538 (1) that an offender has been convicted in Great Britain³ of an offence punishable with imprisonment⁴ committed during the operational period⁵ of a suspended sentence⁶ ordered in respect of an offence committed before 4 April 2005⁷; and
- 539 (2) that he has not been dealt with in respect of the suspended sentence⁸,

that court or justice may issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his arrest⁹.

Where:

- 540 (a) an offender is convicted in Scotland of an offence punishable with imprisonment¹⁰; and
- 541 (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales in relation to an offence committed before 4 April 2005¹¹,

the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed¹².

1 Jurisdiction may be exercised for these purposes: (1) if the suspended sentence was passed by the Crown Court, by that court (Powers of Criminal Courts (Sentencing) Act 2000 s 121(2)(a) (repealed with savings: see note 7)); and (2) if it was passed by a magistrates' court, by a justice acting for the local justice area for which that court acted (s 121(2)(b) (as so repealed with savings)). For these purposes a suspended sentence passed on an offender on appeal is treated as having been passed by the court by which he was originally sentenced: ss 120(3), 121(6) (as so repealed with savings).

2 In accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 121(2) (see note 1).

3 As to the meaning of 'Great Britain' see PARA 9 note 2.

4 As to the meaning of 'offence punishable with imprisonment' see PARA 6 note 5.

5 As to the operational period see PARA 132.

6 As to the meaning of 'suspended sentence' see PARA 132.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 121(1)(a) (repealed with savings: see below). Sections 118-125 (see the text and notes 8-12; PARAS 132-137) were repealed as from 4 April 2005 by the Criminal Justice Act 2003 Sch 37 Pt 7, other than in relation to an offence committed before 4 April 2005 (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3)). In connection with offences committed after 4 April 2005 see PARAS 110-131.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 121(1)(b) (repealed with savings: see note 7).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 121(1) (repealed with savings: see note 7). Such a summons or warrant must direct the offender to appear or be brought before the court by which the suspended sentence was passed: s 121(5) (as so repealed with savings).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 121(3)(a) (repealed with savings: see note 7).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 121(3)(b) (repealed with savings: see note 7).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 121(3) (repealed with savings: see note 7). Unless he is acting in consequence of such a notice, a justice of the peace may not issue a summons under s 121 except on information and may not issue a warrant under these provisions except on information in writing and on oath: s 121(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/139. Fines at common law and under statute.

6. FINES, RECOGNISANCES AND SURCHARGES

(1) FINES

139. Fines at common law and under statute.

At common law a fine, either with or without imprisonment, is a penalty at the discretion of the court¹. By statute, where a person is convicted on indictment of any offence other than an offence for which the sentence is fixed by law² or falls to be imposed under specified provisions³, the court, if not precluded from sentencing him by its exercise of some other power, may impose a fine instead of or in addition to dealing with him in any other way in which the court has power to deal with him, subject, however, to any enactment requiring him to be dealt with in a particular way⁴.

A magistrates' court⁵ has power under statute to punish offences by the imposition of fines⁶ up to the statutory maximum⁷ as an alternative, or in addition, to imprisonment⁸. Where a magistrates' court tries a person under 18 years for an indictable offence⁹ other than homicide or certain firearms offences¹⁰ and finds him guilty, it may impose a fine¹¹ or may exercise the same powers as it could have exercised if he had been found guilty of an offence for which, but for the provisions relating to the restrictions on the imprisonment of young offenders¹², it could have sentenced him to imprisonment for a term not exceeding the maximum term of imprisonment for the offence on conviction on indictment, or six months, whichever is the less¹³. Where a child or young person is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order¹⁴ may be made, a magistrates' court may order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself¹⁵.

Where under any enactment¹⁶ a magistrates' court has power to sentence an offender to imprisonment or other detention but not to a fine, then, except where an Act passed after 31 December 1879 expressly provides to the contrary, the court may, instead of sentencing him to imprisonment or other detention, impose a fine which for an offence triable either way¹⁷ must not exceed the prescribed sum¹⁸, and for a summary offence¹⁹ must not exceed level 3 on the standard scale²⁰, and not be of such amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention²¹ than the term to which he is liable on conviction of the offence²².

1 *R v Castro* (1880) 5 QBD 490, CA; affd sub nom *Castro v R* (1881) 6 App Cas 229, HL. As to the history of the common law power to fine see *R v Morris* [1951] 1 KB 394 at 396, 34 Cr App Rep 210 at 212, CCA, per Lord Goddard CJ. As to fines generally see *R v Olliver*, *R v Olliver* (1989) 11 Cr App Rep (S) 10, CA; *R v Crown Court at Chelmsford, ex p Birchall* [1990] RTR 80, (1989) 11 Cr App Rep (S) 510, DC. Fines are in the lowest range of sentences; there is no threshold for their imposition; and once a court has decided that a fine is the appropriate penalty, the amount should be determined in relation to the gravity of the offence: *R v Fairbairn* (1980) 2 Cr App Rep (S) 315, CA; *R v Messana* (1981) 3 Cr App Rep (S) 88, CA; *R v Cleminson* (1985) 7 Cr App Rep (S) 128, CA. The offender's means should then be considered to decide whether he has the capacity to pay such an amount: *R v Fairbairn*; *R v Cleminson*; *R v Phillips* (1989) Times, 9 June, CA. An affluent defendant should not be fined where the offence merits custody and a less affluent defendant would have been given a custodial sentence: *R v Markwick* (1953) 37 Cr App Rep 125, CCA. It is wrong to impose a sentence of imprisonment, immediate or suspended, where an offender lacks the means to pay a fine (*R v Reeves* (1972) 56 Cr App Rep 366, [1972] Crim LR 194, CA; *R v Crown Court at Liverpool, ex p Baird* [1986] RTR 346, (1985) 7 Cr App Rep (S) 437, CA) and it is wrong to impose a fine on the assumption that others will pay it (*R v Baxter* [1974] Crim LR 611, CA; *R v Curtis* (1984) 6 Cr App Rep (S) 250, [1984] Crim LR 692, CA; *R v Charalambous* (1984) 6 Cr App

Rep (S) 389, [1985] Crim LR 328, CA). See also *R v Barnet Magistrates' Court, ex p Cantor* [1998] 2 All ER 333, [1999] 1 WLR 334, DC. It is normally appropriate to make an allowance before fixing a fine for any time spent by the offender in custody on remand: *R v Warden* [1996] 2 Cr App Rep (S) 269, 160 JP 363, CA.

As to combining custodial sentences with fines for offenders believed to be in possession of substantial sums representing the proceeds of their offences see generally *R v Garner, R v Breeze* [1986] 1 All ER 78, 82 Cr App Rep 27, 7 Cr App Rep (S) 285, CA (where the authorities are reviewed).

2 As to sentences fixed by law see PARA 15.

3 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772) or s 111(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294) or under the Criminal Justice Act 2003 s 225(2) (see PARA 73) or s 226(2) (see PARA 82).

4 Criminal Justice Act 2003 s 163 (amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 59, 68). Where a person convicted on indictment of any offence (whether triable only on indictment or either way) would otherwise be liable to a fine not exceeding a specified amount, he is liable to a fine of any amount: Criminal Law Act 1977 s 32(1). As to the application of this provision to Guernsey see the Criminal Justice Act 1982 (Guernsey) Order 1986, SI 1986/1884. As to the powers and duties of a court imposing a fine see PARA 159; as to the recovery and application of fines imposed by the Crown Court and appellate courts see PARA 160; and as to the restrictions on imposing fines on young offenders see PARA 383.

5 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

6 In the Magistrates' Courts Act 1980 'fine', except for the purposes of any enactment imposing a limit on the amount of any fine, includes any pecuniary penalty, forfeiture or compensation payable under a conviction: s 150(1); cf *Leach v Litchfield* [1960] 3 All ER 739, [1960] 1 WLR 1392, DC (arrear of national insurance contributions recoverable as a penalty are not a fine).

7 As to the statutory maximum see PARA 140.

8 As to justices' power of mitigating the fine see PARA 148. As to fixing the amount of the fine see PARA 144. If the fine imposed is in excess of the maximum prescribed by statute, the conviction may be quashed by order: *R v Willesden Justices, ex p Utley* [1948] 1 KB 397, [1947] 2 All ER 838, DC. As to enforcement of the fine in default of payment see **MAGISTRATES** vol 29(2) (Reissue) PARA 860 et seq. As to means inquiry see **MAGISTRATES** vol 29(2) (Reissue) PARA 864. A magistrates' court may not remit the whole or part of a fine imposed by, or sum due under a recognisance forfeited by the Crown Court, the criminal division of the Court of Appeal, or the Supreme Court, on appeal from that division without the consent of the Crown Court: Powers of Criminal Courts (Sentencing) Act 2000 s 140(5) (amended by the Constitutional Reform Act 2005 Sch 9 para 69). As to the Supreme Court see PARA 53 note 1.

9 As to indictments generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1202 et seq; and as to the procedure for offences triable on indictment see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1232 et seq.

10 Ie under the Magistrates' Courts Act 1980 s 24(1): see **MAGISTRATES** vol 29(2) (Reissue) PARA 663; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1116.

11 Ie a fine of an amount not exceeding £1,000 or, in relation to a person under the age of 14, £250: see the Magistrates' Courts Act 1980 s 24(3), (4); and **MAGISTRATES** vol 29(2) (Reissue) PARA 663. As to limiting the fines which may be levied on young offenders see PARA 143.

12 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 89(1): see PARA 11.

13 See the Magistrates' Courts Act 1980 s 24; **MAGISTRATES** vol 29(2) (Reissue) PARA 663; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1116.

14 As to compensation orders see PARA 375 et seq.

15 See the Powers of Criminal Courts (Sentencing) Act 2000 s 137; and PARA 383.

16 Ie any enactment whether passed before or after 6 July 1981 (ie the commencement of the Magistrates' Courts Act 1980: see the Magistrates' Courts Act 1980 (Commencement) Order 1981, SI 1981/457).

17 As to offences triable either way see **MAGISTRATES** vol 29(2) (Reissue) PARA 653.

18 Magistrates' Courts Act 1980 s 34(3)(a). As to the prescribed sum see PARA 141.

- 19 As to summary offences see **MAGISTRATES** vol 29(2) (Reissue) PARA 653.
- 20 Magistrates' Courts Act 1980 s 34(3)(b)(i) (amended by virtue of the Criminal Justice Act 1991 Sch 4 Pt II).
As to the standard scale see PARA 142.
- 21 As to imprisonment in default of payment of fine see **MAGISTRATES** vol 29(2) (Reissue) PARA 860 et seq.
- 22 Magistrates' Courts Act 1980 s 34(3)(b)(ii).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/140. Meaning of 'statutory maximum'.

140. Meaning of 'statutory maximum'.

With reference to a fine or penalty on summary conviction for an offence triable either way, 'statutory maximum' means the prescribed sum¹ within the meaning of the Magistrates' Courts Act 1980².

1 ie within the meaning of the Magistrates' Courts Act 1980 s 32: see PARA 141.

2 Interpretation Act 1978 Sch 1 (amended by the Criminal Justice Act 1988 Sch 15 para 58(b)). By virtue of the Criminal Justice Act 1988 s 59(3), (4) the Secretary of State may by order amend any enactment or subordinate instrument specifying a sum which:

126 (1) is specified as the maximum fine which may be imposed on summary conviction of an offence triable either way; and

127 (2) is higher than the statutory maximum,

so as to substitute for that sum such other sum as appears to him:

128 (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

129 (b) to be appropriate to take account of an order made or proposed to be made altering the statutory maximum.

For these purposes, 'enactment' includes an enactment passed after the Criminal Justice Act 1988; and 'subordinate instrument' includes an instrument made after 29 July 1988 (ie the date on which the Criminal Justice Act 1988 received Royal Assent): s 59(6).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/141. Meaning of 'prescribed sum'.

141. Meaning of 'prescribed sum'.

'Prescribed sum' means £5,000 or such sum as is for the time being substituted by an order¹ in force under the Magistrates' Courts Act 1980².

1 le an order under the Magistrates' Courts Act 1980 s 143(1). If it appears to the Secretary to State that there has been a change in the value of money since the relevant date, he may by order substitute for the sum for the time being specified in s 32(9) such other sum as appears to him justified by the change: s 143(1), (2)(b) (s 143(1) substituted by the Criminal Justice Act 1982 s 48(1)).

2 Magistrates' Courts Act 1980 s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/142. Meaning of 'standard scale'.

142. Meaning of 'standard scale'.

There is a standard scale of fines for summary offences¹, as follows:

- 542 level 1: £200²;
- 543 level 2: £500³;
- 544 level 3: £1,000⁴;
- 545 level 4: £2,500⁵;
- 546 level 5: £5,000⁶.

Where any enactment⁷ provides that a person convicted of a summary offence is to be liable on conviction to a fine or a maximum fine by reference to a specified level on the standard scale, it is to be construed as referring to this scale as it has effect⁸ from time to time⁹.

1 Criminal Justice Act 1982 s 37(1). The Interpretation Act 1978 Sch 1 (amended by the Criminal Justice Act 1988 Sch 15 para 58(a)) provides that with reference to a fine or penalty for an offence triable only summarily, 'standard scale' has the meaning given by the Criminal Justice Act 1982 s 37.

2 Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)).

3 Criminal Justice Act 1982 s 37(2) (as substituted: see note 2).

4 Criminal Justice Act 1982 s 37(2) (as substituted: see note 2).

5 Criminal Justice Act 1982 s 37(2) (as substituted: see note 2).

6 Criminal Justice Act 1982 s 37(2) (as substituted: see note 2).

7 *le* whether contained in an Act passed before or after the Criminal Justice Act 1982: s 37(3). By virtue of the Criminal Justice Act 1988 s 59(1), (2) the Secretary of State may by order amend any enactment or subordinate instrument specifying a sum which:

130 (1) is specified as the maximum fine which may be imposed on conviction of a summary offence; and

131 (2) is higher than level 5 on the standard scale,

so as to substitute for that sum such other sum as appears to him:

132 (a) to be justified by a change in the value of money appearing to him to have taken place since the last occasion on which the sum in question was fixed; or

133 (b) to be appropriate to take account of an order made or proposed to be made altering the standard scale.

As to the meanings of 'enactment' and 'subordinate instrument' see PARA 140 note 2. Any such order does not affect the punishment for an offence committed before it comes into force: s 59(5).

8 *le* by virtue of the Criminal Justice Act 1982 s 37 or of an order under the Magistrates' Courts Act 1980 s 143 (see PARA 141): Criminal Justice Act 1982 s 37(3). As to the application of this provision to Guernsey see the Criminal Justice Act 1982 (Guernsey) Order 1992, SI 1992/3202.

9 Criminal Justice Act 1982 s 37(3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/143. Young offenders.

143. Young offenders.

Where a person aged under 18¹ is found guilty by a magistrates' court of an offence for which² the court would have power to impose a fine of an amount exceeding £1,000, the amount of any fine imposed by the court must not exceed £1,000³, and where a person aged under 14 is found guilty by a magistrates' court of an offence for which⁴ the court would have power to impose a fine of an amount exceeding £250, the amount of any fine imposed by the court must not exceed £250⁵.

A magistrates' court may order the parent or guardian of a young person to pay a fine incurred by that person⁶.

1 As to the determination of a young offender's age see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1243.

2 Ie apart from the Powers of Criminal Courts (Sentencing) Act 2000 s 135: see the text and notes 3-5.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 135(1).

4 See note 2.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 135(2).

6 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 136, 137; and PARA 383.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/144. Fixing of fines.

144. Fixing of fines.

The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence¹, and in fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court².

Where an offender:

- 547 (1) has been convicted³ in his absence⁴;
- 548 (2) has failed to furnish a statement of his financial circumstances in response to a request which is an official request⁵;
- 549 (3) has failed to comply with a financial circumstances order⁶; or
- 550 (4) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances⁷,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit⁸.

1 Criminal Justice Act 2003 s 164(2).

2 Criminal Justice Act 2003 s 164(3). Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his financial circumstances: s 164(1). As to the making of a financial circumstances order see PARA 144. Section 164(3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine (s 164(4)), and in applying s 164(3) a court must not reduce the amount of a fine on account of any surcharge it orders the offender to pay under s 161A (see PARA 158), except to the extent that he has insufficient means to pay both: s 164(4A) (added by the Domestic Violence, Crime and Victims Act 2004 s 14(2)). See *R v Guy's and St Thomas' NHS Trust* [2008] EWCA Crim 2187, [2008] 4 All ER 1174, [2009] 1 Cr App Rep (S) 585 (public benefit considerations in fining not-for-profit body).

3 In pursuance of the Magistrates' Courts Act 1980 s 11 or s 12 (non-appearance of defendant: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 693, 705-706).

4 Criminal Justice Act 2003 s 164(5)(a).

5 Criminal Justice Act 2003 s 164(5)(b)(i). The reference in the text to a request which is an official request is a reference to an official request for the purposes of the Criminal Justice Act 1991 s 20A (offences of making false statement as to financial circumstances: see PARA 145).

6 Criminal Justice Act 2003 s 164(5)(b)(ii). A financial circumstances order is an order under s 162(1): see PARA 146.

7 Criminal Justice Act 2003 s 164(5)(b)(iii).

8 Criminal Justice Act 2003 s 164(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/145. Statement as to offender's financial circumstances before conviction.

145. Statement as to offender's financial circumstances before conviction.

The designated officer for a magistrates' court and the appropriate officer of the Crown Court may request a person who is charged with an offence to furnish a statement of his financial circumstances in order to inform the court, in the event of that person being convicted, of his financial circumstances for the purpose of determining the amount of any fine the court may impose and how it should be paid¹, and it is an offence² for such a person:

- (1) to fail to furnish such a statement³; or
- (2) in furnishing such a statement:

- 551 (a) to make a statement which he knows to be false in a material particular⁴;
- 552 (b) recklessly to furnish a statement which is false in a material particular⁵; or
- 553 (c) knowingly to fail to disclose any material fact⁶.

1 See the Criminal Justice Act 1991 s 20A(1), (2) (s 20A added by the Criminal Justice and Public Order Act 1994 Sch 9 para 43; Criminal Justice Act 1991 s 20A(1A) added, s 20A(2) amended, by the Courts Act 2003 s 95, Sch 8 para 350). Such a request is referred to as an 'official request': Criminal Justice Act 1991 s 20A(2) (as so added and amended).

2 Proceedings in respect of an offence under the Criminal Justice Act 1991 s 20A may, notwithstanding anything in the Magistrates' Courts Act 1980 s 127(1) (limitation of time: see magistrates vol 29(2) (Reissue) PARA 589), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier: Criminal Justice Act 1991 s 20A(3) (as added: see note 1).

3 Criminal Justice Act 1991 s 20A(1A) (as added: see note 1). This offence is punishable on summary conviction by a fine not exceeding level 2 on the standard scale: s 20A(1A) (as so added). As to the standard scale see PARA 142.

4 Criminal Justice Act 1991 s 20A(1)(a) (as added: see note 1). An offence under s 20A(1) is punishable on summary conviction by imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both: s 20A(1) (as so added).

5 Criminal Justice Act 1991 s 20A(1)(b) (as added: see note 1). See note 3.

6 Criminal Justice Act 1991 s 20A(1)(c) (as added: see note 1). See note 3.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/146. Statement as to offender's financial circumstances after conviction.

146. Statement as to offender's financial circumstances after conviction.

Where an individual has been convicted of an offence the court may, before sentencing him, make a financial circumstances order with respect to him¹. A 'financial circumstances order' means, in relation to any individual, an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require².

It is an offence for an individual:

- 554 (1) without reasonable excuse to fail to comply with a financial circumstances order³; or
 - 555 (2) in furnishing any statement in pursuance of a financial circumstances order:
9
 - 36. (a) to make a statement which he knows to be false in a material particular⁴;
 - 37. (b) recklessly to furnish a statement which is false in a material particular⁵; or
 - 38. (c) knowingly to fail to disclose any material fact⁶.
- 10

1 Criminal Justice Act 2003 s 162(1). A court may also make a financial circumstances order where a magistrates' court has been notified in accordance with the Magistrates' Courts Act 1980 s 12(4) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 706) that an individual desires to plead guilty without appearing before the court: Criminal Justice Act 2003 s 162(2).

2 Criminal Justice Act 2003 s 162(3).

3 Criminal Justice Act 2003 s 162(4). This offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: s 162(4). As to the standard scale see PARA 142.

4 Criminal Justice Act 2003 s 162(5)(a). An offence under s 162(5) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale: s 162(5). Proceedings in respect of an offence under s 162(5) may, notwithstanding anything in the Magistrates' Courts Act 1980 s 127(1) (limitation of time: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier: Criminal Justice Act 2003 s 162(6).

5 Criminal Justice Act 2003 s 162(5)(b). See note 4.

6 Criminal Justice Act 2003 s 162(5)(c). See note 4.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/147. Remission of fines.

147. Remission of fines.

Where, in fixing the amount of a fine, a court has determined the offender's financial circumstances¹ and, on subsequently inquiring into the offender's financial circumstances, is satisfied that had it had the results of that inquiry when sentencing the offender it would:

- 556 (1) have fixed a smaller amount²; or
- 557 (2) not have fined him³,

it may remit the whole or part of the fine⁴. Where the court so remits the whole or part of a fine after a term of imprisonment in default has been fixed⁵, it must reduce the term by the corresponding proportion⁶.

1 Ie in accordance with the Criminal Justice Act 2003 s 164(5); and PARA 144.

2 Criminal Justice Act 2003 s 165(1), (2)(a).

3 Criminal Justice Act 2003 s 165(2)(b).

4 Criminal Justice Act 2003 s 165(2).

5 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 139 (see PARA 159) or the Magistrates' Courts Act 1980 s 82(5) (magistrates' powers in relation to default: see **MAGISTRATES** vol 29(2) (Reissue) PARA 862).

6 Criminal Justice Act 2003 s 165(3). In calculating any reduction so required, any fraction of a day is to be ignored: s 165(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/148. Mitigation of fine.

148. Mitigation of fine.

Where under any enactment¹ a magistrates' court² has power to sentence an offender to a fine³ of an amount specified in the enactment, then, except where an Act passed after 31 December 1879⁴ expressly provides to the contrary, the court may sentence him to a fine of less than that amount⁵. Where under any such enactment an offender sentenced on summary conviction to a fine is required to enter into a recognisance⁶ with or without sureties to keep the peace or observe any other condition, the court convicting him may dispense with or modify the requirement⁷.

1 In any enactment whether passed before or after 6 July 1981 (ie the commencement of the Magistrates' Courts Act 1980: see the Magistrates' Courts Act 1980 (Commencement) Order 1981, SI 1981/457).

2 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

3 As to the power to impose fines see PARA 139 et seq.

4 Where by a statute passed since 31 December 1879 (the date of the passing of the Summary Jurisdiction Act 1879), it is provided that not less than a minimum sum is to be imposed for a first offence, the justices have no power to reduce the penalty below that amount: *Osborn v Wood Bros* [1897] 1 QB 197, DC.

5 Magistrates' Courts Act 1980 s 34(1). Arrears of national insurance contributions, although recoverable as a penalty, may not be reduced under this provision: *Leach v Litchfield* [1960] 3 All ER 739, [1960] 1 WLR 1392, DC. As to mitigation of imprisonment see PARA 39.

6 As to recognisances see PARAS 151-157.

7 Magistrates' Courts Act 1980 s 34(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/149. Non-pecuniary forfeitures.

149. Non-pecuniary forfeitures.

A court, on the conviction of an offender, may order the forfeiture of some article in relation to which the offence was committed¹. Subject to any enactment relating to customs or excise, anything other than money forfeited on a conviction by a magistrates' court² or the forfeiture of which may be enforced by a magistrates' court must be sold or otherwise disposed of in such manner as the court may direct, and the proceeds are applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded³.

1 See PARA 480. As to deprivation of property used for crime see the Powers of Criminal Courts (Sentencing) Act 2000 s 143; and PARA 481.

2 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

3 Magistrates' Courts Act 1980 s 140.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(1) FINES/150. On the spot penalties and fixed penalties.

150. On the spot penalties and fixed penalties.

On the spot penalties may be given in respect of a number of specified public order offences¹, and a number of road traffic offences may be dealt with by way of fixed penalty². On the spot penalties and fixed penalties are administered by means of the giving of penalty notices in respect of the offence, which give the offender the opportunity to discharge his liability to be convicted of the offence in return for the payment of a penalty which is significantly lower than the maximum fine for which the person might be liable on conviction³.

1 As to these offences see the Criminal Justice and Police Act 2001 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 586.

2 As to these offences see the Road Traffic Offenders Act 1988 Sch 3; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1093.

3 See the Criminal Justice and Police Act 2001 ss 2, 3; the Road Traffic Offenders Act 1988 ss 52, 53; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 587; **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1093 et seq.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(2) RECOGNISANCES/151.
 Recognisances to keep the peace at common law.

(2) RECOGNISANCES

151. Recognisances to keep the peace at common law.

A person convicted of any indictable offence, whether at common law or by statute, may be ordered, in addition to or in substitution for any other penalty, to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour¹ for a reasonable time to be specified in the order, and to be imprisoned until the recognisances are entered into². A court intending to impose a substantial recognisance must give the defendant an opportunity to make representations and must inquire into his means before making the order³. If the conditions of a recognisance are broken, it may be forfeited⁴.

The Crown Court also has power, instead of passing sentence, to respite judgment and require a person who has been convicted of any offence, the penalty for which is not fixed by law⁵, to enter into recognisances, with or without sureties, to come up for judgment when called upon⁶; the recognisances may and usually do contain a condition that the convicted person should in the meantime keep the peace and be of good behaviour⁷. A defendant dealt with by binding over to come up for judgment is deemed to be for all purposes a person convicted on indictment⁸.

Magistrates may bind a person over to be of good behaviour to prevent an apprehended offence, and it is not necessary in such a case for the applicant to swear that he goes in fear of the person against whom the application is made⁹.

1 The power to bind over to be of good behaviour does not meet the requirement of certainty under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 10 (freedom of expression: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 158 et seq) because it fails to give any reliable indication of what would constitute a breach of the order (*Hashman v United Kingdom (Application 25594/94)* (2000) 30 EHRR 241, 8 BHRC 104, [2000] Crim LR 185, ECtHR), and in light of this judgment courts should no longer bind an individual over 'to be of good behaviour', and rather than binding an individual over to 'keep the peace' in general terms, the court should identify the specific conduct or activity from which the individual must refrain (see *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at III.31.3 (added by *Practice Direction (Amendment No 15 to the Consolidated Criminal Practice Direction)* [2007] All ER (D) 520 (Mar). Cf, however, *Steel v United Kingdom* (1998) 28 EHRR 603, [1998] Crim LR 893 ECtHR (power to bind over to keep the peace meets the requirement of certainty under the Convention). The power of a magistrates' court to bind persons over to be of good behaviour in respect of their conduct in court should cease to be exercised: *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at V.54.5, CA.

2 *Dunn v R* (1848) 12 QB 1031, Ex Ch; *R v Trueman* [1913] 3 KB 164, 9 Cr App Rep 20, CCA (conviction under the Libel Act 1843 s 5). See also *R v Hart* (1809) 30 State Tr 1325 at 1343-1344, HL. It is doubtful whether or not there is power to order a person to enter into a recognisance for an unlimited period of time, but the established practice has been to impose a time limit, and this practice ought to be followed: *R v Edgar* (1913) 9 Cr App Rep 13, CCA. Cf *Prickett v Gratrex* (1846) 8 QB 1020. In *R v Green-Emmott* (1931) 144 LT 671, 22 Cr App Rep 183, CCA, it was held that there is a presumption against the validity of a recognisance entered into by a person who was at the time a certified lunatic. A magistrates' court may bind over a person under 18 who consents to be bound over (*Conlan v Oxford* (1983) 79 Cr App Rep 157, 5 Cr App Rep (S) 237, DC), although if such a person refuses to enter into a recognisance, there is no such power to do so (*Veater v G* [1981] 2 All ER 304, sub nom *Veater v Glennon* (1981) 72 Cr App Rep 331, DC). If the offender is aged 18 or over and under 21 and refuses to enter into a recognisance, the court has power to commit him to be detained under the Powers of Criminal Courts (Sentencing) Act 2000 s 108(1)(a) (see PARA 11): *Howley v Oxford* (1985) 81 Cr App Rep 246, DC. As to the statutory power to bind over see PARA 152. See also *R v Crown Court at Ipswich, ex p Eris* (1989) Times, 23 February, DC (a judge is not entitled to bind over a defendant to be of good behaviour simply because he has used his criminal trial as a vehicle for airing his views about nuclear power

etc; the appropriate response is judicial control of the trial and, if necessary, resort to the procedure for contempt of court).

3 *R v Central Criminal Court, ex p Boulding* [1984] QB 813, 79 Cr App Rep 100, DC; *R v Atkinson* (1988) 10 Cr App Rep (S) 470, [1989] Crim LR 457, CA; *R v Crown Court at Nottingham, ex p Brace* (1989) 154 JP 161, CA.

4 See PARA 153. As to the powers and duties of a court by which a recognisance is forfeited see PARA 159; and as to the recovery and application of recognisances forfeited by the Crown Court and appellate courts see PARA 160.

5 As to penalties fixed by law see PARA 15.

6 If it is proposed to bring the defendant up for judgment, a notice must be given to him and his bail: *R v David* [1939] 1 All ER 782, 27 Cr App Rep 50, CCA.

7 This power, known as the 'common law bind over', may be exercised in lieu of sentence only: *R v Ayu* [1958] 3 All ER 636, 43 Cr App Rep 31, CCA. It may be used to return an offender to Ireland and keep him there: *R v Flaherty* [1958] Crim LR 556, CCA; *R v McCartan* [1958] 3 All ER 140, 42 Cr App Rep 262, CCA; *R v Hodges* (1967) 51 Cr App Rep 361, CA. The power to keep an offender out of the jurisdiction is one which should be used very sparingly. It is very seldom to be done if the offender does not consent and, save in exceptional circumstances (see eg *R v Hodges*), it should be used only to ensure that the offender goes to a country of which he is a citizen or in which he is habitually resident or where there are very special circumstances in which the receiving country is prepared to take him for his own well-being: *R v Ayu*; *R v Williams (Carl)* [1982] 3 All ER 1092, 75 Cr App Rep 378, CA.

A magistrates' court may not bind over a defendant to come up for judgment: *R v Crown Court at Acton, ex p Bewley* (1988) 10 Cr App Rep (S) 105, DC.

8 *Jephson v Barker and Redman* (1886) 3 TLR 40; *R v Abrahams* (1952) 36 Cr App Rep 147, CCA. This is in contrast to the position of the defendant absolutely or conditionally discharged: see PARA 41.

9 See *R v Wilkins* [1907] 2 KB 380, DC; *Lansbury v Riley* [1914] 3 KB 229, DC; followed in *R v Sandbach, ex p Williams* [1935] 2 KB 192, DC. Before imposing a binding over order, the court must be satisfied that a breach of the peace involving violence or an imminent threat of violence has occurred or that there is a real risk of violence in the future: such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct: see *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at III.31.2 (added by *Practice Direction (Amendment No 15 to the Consolidated Criminal Practice Direction)* [2007] All ER (D) 520 (Mar)).

An order of a magistrates' court requiring a person to find sureties to keep the peace and to be of good behaviour should show on its face facts sufficient to give the justices jurisdiction to make the order, especially when there has been no conviction: *R (Boylan) v Londonderry County Justices* [1912] 2 IR 374; *R (Mulholland) v Monaghan Justices* [1914] 2 IR 156. See, however, criticism of binding over for good behaviour in *Binding Over* (Law Com no 222) (1994), which recommended its abolition; and *Hashman v United Kingdom Application 25594/94* (2000) 30 EHRR 241, 8 BHRC 104, [2000] Crim LR 185, ECtHR. However, see also *Steel v United Kingdom* (1998) 28 EHRR 603, ECtHR.

For the development of the power to bind over and for an analysis of the law see *Criminal Law Binding Over: The Issues* (Law Com Working Paper no 103) (1987); and *Binding Over* (Law Com no 222) (1994). Whether the origin of the jurisdiction of justices is derived from the common law, the commission of the peace, or the Justices of the Peace Act 1361 (34 Edw 3 c 1: see **MAGISTRATES** vol 29(2) (Reissue) PARA 504), the practice of making these orders for the purpose of preventing apprehended breaches of the peace is too well established to allow of its propriety being now questioned: *Lansbury v Riley*. A magistrates' court may exercise its powers if there is an incitement to commit breaches of the peace generally; it is not necessary that a particular person be threatened: *Lansbury v Riley*. The order may be made if it is apprehended that the defendant will break the law, even though there is no apprehension of violence and even though he may become liable, on forfeiture of the recognisance, to a penalty greater than that fixed for the offence of which he has been convicted (*R v Sandbach, ex p Williams*), and may be made even if the occasion upon which the breach of the peace was feared has passed (*R v Little and Dunning, ex p Wise* (1909) 74 JP 7, DC). Justices have power to bind over a defendant for the future if his disorderly conduct is likely to result in violence, even if no offence has been committed: *R v Morpeth Ward Justices, ex p Ward* (1992) 95 Cr App Rep 215, DC.

It has been held that the power to bind over to prevent an apprehended offence is exercisable, even though no criminal offence has been committed, if there was conduct contra bonos mores (ie conduct which has the property of being wrong rather than right in the judgment of the majority of contemporary citizens: see *Hughes v Holley* [1987] Crim LR 253, (1986) 86 Cr App Rep 130, DC) and the magistrates have some cause to believe that without a binding over the defendant might repeat his conduct (*Hughes v Holley*; see also *R v South Molton Justices, ex p Ankersen* [1988] 3 All ER 989, [1989] 1 WLR 40, DC (not followed, in relation to the requirements for consent in *R v Crown Court at Lincoln, ex p Jude* [1997] 3 All ER 737, [1998] 1 WLR 24, DC)): this is however now doubtful (see *Hashman v United Kingdom (Application 25594/94)* (2000) 30 EHRR 241, 8 BHRC 104, [2000]

Crim LR 185, ECtHR, in which it was held that the concept of 'contra bonos mores' was insufficiently precise to comply with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): see note 1).

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152. Recognisances to keep the peace by statute.

Any court of record¹ having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour², a person who, or whose case, is before the court³, by requiring him to enter into his own recognisance or to find sureties or both, and committing him to prison if he does not comply⁴.

The power of a magistrates' court⁵ on the complaint of any person to adjudge any other person to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour towards the complainant is exercised by order on complaint⁶, and the facts must be ascertained and the case decided in the same manner as in the hearing of any other complaint⁷. Alternatively, he may be brought before the court following his arrest for a breach of the peace⁸, or may simply be present before the court⁹. Consent is not a prerequisite to making an order for a bind over¹⁰. Where any person ordered by a magistrates' court¹¹ to enter into a recognisance, with or without sureties, to keep the peace or to be of good behaviour fails to comply with the order, the court may commit him to custody for a period not exceeding six months or until he sooner complies with the order¹². Where a child¹³ or young person¹⁴ is convicted of an offence, the magistrates' court has the power, with the consent of the offender's parent or guardian, to order the parent or guardian to enter into a recognisance to take proper care of him and exercise proper control over him¹⁵.

1 The Crown Court, High Court and Court of Appeal are courts of record: see **COURTS** vol 10 (Reissue) PARA 308.

2 See PARA 151.

3 A person who has attended court to give evidence but who has not been called as a witness is not 'a person who, or whose case, is before the court': *R v Crown Court at Swindon, ex p Pawittar Singh* [1984] 1 All ER 941, 79 Cr App Rep 137, DC. See also *R v Crown Court at Kingston-upon-Thames, ex p Guarino* [1986] Crim LR 325, DC.

4 Justices of the Peace Act 1968 s 1(7) (amended by the Administration of Justice Act 1973 Sch 5 Pt II). Where a court is minded to bind over a person who has appeared before it either as a complainant or a witness, the court must inform the person concerned and give him the opportunity of being heard: *Sheldon v Bromfield Justices* [1964] 2 QB 573, [1964] 2 All ER 131, DC; *R v Hendon Justices, ex p Gorchein* [1974] 1 All ER 168, [1973] 1 WLR 1502, DC. It is not essential to do so in the case of an acquitted defendant but it is good practice: *R v Woking Justices, ex p Gossage* [1973] QB 448, [1973] 2 All ER 621, DC. See also *R v Central Criminal Court, ex p Boulding* [1984] QB 813, 79 Cr App Rep 100, DC; and PARA 151 text and note 3. An order can be made at the court's own motion at any stage of proceedings before the court if it emerges in evidence that there is a likelihood of a breach of the peace: *R v Crown Court at Swindon, ex p Pawittar Singh* [1984] 1 All ER 941, 79 Cr App Rep 137, DC.

5 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

6 Magistrates' Courts Act 1980 s 115(1). The prescribed form of commission of the peace requires justices 'to cause to come before you and to deal according to law with all persons against whom anything is alleged giving just cause under any rule of law or enactment for the time being in force why they should find security to keep the peace or be of good behaviour towards us and our people . . .': see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, Schedule Pt II Form A (amended by SI 2005/617). Where a complaint is made under the Magistrates' Courts Act 1980 s 115, the power of the court to remand the defendant for non-appearance under s 55(5) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 714) is not subject to the restrictions imposed by s 55(6): s 115(2). See also **MAGISTRATES** vol 29(2) (Reissue) PARA 505. Before magistrates may exercise their power under the Magistrates' Courts Act 1980 s 115 to bind over a defendant to keep the peace, it must be proved on the criminal standard of proof that there has been violence or threats of violence, and it suffices that a consequence of the defendant's conduct is that there is a real risk of violence by

a third party: *Percy v DPP* [1995] 3 All ER 124, [1995] 1 WLR 1382, DC. The order should show on its face facts sufficient to give the court jurisdiction to make the order, especially when there has been no conviction: *R (Boylan) v Londonderry County Justices* [1912] 2 IR 374; *R (Mulholland) v Monaghan Justices* [1914] 2 IR 156. A magistrates' court should require the recognisance to be for a definite period: see *R v Edgar* (1913) 77 JP 356. A binding over is not a conviction: *R v County of London Quarter Sessions Appeal Committee, ex p Metropolitan Police Comrs* [1948] 1 KB 670, [1948] 1 All ER 72, DC; *R v London Sessions, ex p Beaumont* [1951] 1 KB 557, [1951] 1 All ER 232, DC. As to the method of taking and recording recognisances see the Magistrates' Courts Rules 1981, SI 1981/552, r 86; and for the form of order of recognisance to keep the peace see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Form 115.

Proceedings for binding over a person to keep the peace may comply with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5 (right to liberty and security; see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 127-133) and art 6 (right to a fair trial; see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 134-147) as the legal rules relevant to the concept of breach of the peace provide sufficient guidance and are formulated with the degree of precision required by the Convention: *Steel v United Kingdom* (1998) 5 BHRC 339, ECtHR. However, a binding-over order to prevent future conduct which is *contra bonos mores* (see PARA 151 note 9) does not comply with the Convention since the expression 'to be of good behaviour' is particularly imprecise and offers little guidance to the person bound over as to the type of conduct which will amount to a breach of the order where the defendant has not been charged with a criminal offence and has not been found to have breached the peace: see *Hashman v United Kingdom (Application 25594/94)* (2000) 30 EHRR 241, 8 BHRC 104, ECtHR; and PARA 151 note 1.

7 See **MAGISTRATES** vol 29(2) (Reissue) PARA 726 et seq. Before imposing a binding over order, the court must be satisfied that a breach of the peace involving violence or an imminent threat of violence has occurred or that there is a real risk of violence in the future: such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct: see *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at III.31.3 (added by *Practice Direction (Amendment No 15 to the Consolidated Criminal Practice Direction)* [2007] All ER (D) 520 (Mar)). The jurisdiction of the justices does not depend on the issue of a summons, nor the existence of a complaint in the prescribed form: *R v Coventry Magistrates' Court, ex p Crown Prosecution Service* (1996) 160 JP 741, [1996] Crim LR 723, DC. As to the right of appeal to the Crown Court see **MAGISTRATES** vol 29(2) (Reissue) PARA 883. As to enforcement of the order and forfeiture of the recognisance see PARAS 156-157. As the jurisdiction may no longer be exercised without notice, no action for malicious prosecution will lie at the suit of a person required to enter into a recognisance: *Everett v Ribbands* [1952] 2 QB 198, [1952] 1 All ER 823, CA. See **TORT** vol 97 (2010) PARA 627.

8 As to the power of arrest for breach of the peace see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 930. It is doubtful there is any procedure at common law and in practice the drawing up of a 'charge sheet' or other such document can be construed as a complaint under the Magistrates' Courts Act 1980 s 115: *DPP v Speede* [1998] 2 Cr App Rep 108, DC.

9 No formal complaint is necessary if the party is already before the court (*Ex p Davis* (1871) 35 JP 551 per Blackburn J; *R v Hughes* (1879) 4 QBD 614 at 625 per Hawkins J), and a complainant may himself be bound over without being summoned (*R v Wilkins* [1907] 2 KB 380, DC). If the justices are thinking of binding over a complainant or a witness, they should warn him and give him an opportunity to make representations (*Sheldon v Bromfield Justices* [1964] 2 QB 573, [1964] 2 All ER 131, DC; *R v Hendon Justices, ex p Gorchein* [1974] 1 All ER 168, [1973] 1 WLR 1502, DC), but such a warning is not necessary where the person to be bound over is an acquitted defendant (*R v Woking Justices, ex p Gossage* [1973] QB 448, [1973] 2 All ER 621, DC), or has committed the misconduct justifying the order in the face of the court (*R v North London Metropolitan Magistrate, ex p Haywood, R v North London Metropolitan Magistrate, ex p Brown* [1973] 3 All ER 50, [1973] 1 WLR 965, DC).

Whereas an order for binding over under the Magistrates' Courts Act 1980 s 115 may only be made after the case has been heard out completely, an order under the Justices of the Peace Act 1361 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 504) may be made at any time during the proceedings subject to an opportunity being given to the applicant or his advisers to argue against it; nevertheless there is no jurisdiction to make an order unless the proceedings have reached the stage where it emerges that there might be a breach of the peace in the future: *R v Aubrey-Fletcher, ex p Thompson* [1969] 2 All ER 846, [1969] 1 WLR 872, DC.

10 *R v Woking Justices, ex p Gossage* [1973] QB 448, [1973] 2 All ER 621, DC; *R v Crown Court at Lincoln, ex p Jude* [1997] 3 All ER 737, [1998] 1 WLR 24, DC, not following *R v South Molton Justices, ex p Ankerson* [1988] 3 All ER 989, [1989] 1 WLR 40, DC.

11 Ie under the Magistrates' Courts Act 1980 s 115(1): see the text and notes 5-6.

12 Magistrates' Courts Act 1980 s 115(3). See *Veater v G* [1981] 2 All ER 304, [1981] 1 WLR 567, DC. See further PARA 154. The court has power to bind over an offender aged under 18 (and who is not liable to imprisonment or detention under what is now the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see

MAGISTRATES vol 29(2) (Reissue) PARA 854)) with his consent either under his own recognisance or by requiring him to provide sureties: *Conlan v Oxford* (1983) 148 JP 97, DC.

13 As to the meaning of 'child' see PARA 5 note 3.

14 As to the meaning of 'young person' see PARA 5 note 3.

15 See the Powers of Criminal Courts (Sentencing) Act 2000 s 150; PARA 312; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288.

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Breach of condition of recognisance.

153. Breach of condition of recognisance.

If a person fails to satisfy the condition of a recognisance, the recognisance may be forfeited¹. Breach of recognisance which renders a person liable to be sentenced for an offence of which he was convicted when he entered into the recognisance must be proved as any other allegation of fact is proved in a criminal court². However, where a breach of recognisance only renders a person liable to forfeiture of the recognisance, the civil standard of proof applies³. An appeal lies to the Court of Appeal from a decision of the Crown Court that a defendant has broken a recognisance⁴.

1 As to the powers and duties of a court by which a recognisance is forfeited see PARA 159; and as to the recovery and application of recognisances forfeited by the Crown Court and appellate courts see PARA 160.

2 *R v Smith* [1925] 1 KB 603, 18 Cr App Rep 170, CCA; *R v McGarry* (1945) 30 Cr App Rep 187, CCA; *R v McGregor* [1945] 2 All ER 180, 30 Cr App Rep 155, CCA. In such cases counsel for the prosecution should be instructed: *R v McGregor*. In *R v David* [1939] 1 All ER 782, 27 Cr App Rep 50, CCA, it was held that the issue as to whether there has been a breach is not one for a jury. Where the prosecution relies on a conviction during the period of the recognisance as constituting the breach, that conviction should, it seems, be strictly proved: see *R v Pine* (1932) 24 Cr App Rep 10, CCA. See also *R v Philbert* [1973] Crim LR 129, CA (breach of condition added to common law bind over that offender returned to West Indies; should be inquiry as to whether breach deliberate or caused by lack of means). The defendant must be given the opportunity of giving evidence in answer to the allegation that he has committed a breach of his recognisance: *R v Pine*. The Crown Court should inform any magistrates' court dealing with an offender of any pending case of breach of recognisance, and the latter court should inquire whether the Crown Court wishes it to take the breach into consideration in passing sentence: *R v Tarbotton* [1942] 1 All ER 198, 28 Cr App Rep 92, CCA.

3 *R v Marlow Justices, ex p O'Sullivan* [1984] QB 381, 78 Cr App Rep 13, DC (doubted, obiter, in *Percy v DPP* [1995] 3 All ER 124 at 134, DC, per Collins J).

4 *R v Smith* [1925] 1 KB 603, 18 Cr App Rep 170, CCA; *R v McGarry* (1945) 30 Cr App Rep 187, CCA; *R v McGregor* [1945] 2 All ER 180, 30 Cr App Rep 155, CCA.

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Dispensing with defendant's recognisance.

154. Dispensing with defendant's recognisance.

Where a magistrates' court¹ has committed a person to custody in default of finding sureties, the court may, on application by or on behalf of the person committed, and after hearing fresh evidence, reduce the amount in which it is proposed that any surety should be bound or dispense with any of the sureties or otherwise deal with the case as it thinks just². However, this does not apply in relation to a person granted bail in criminal proceedings³.

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 Magistrates' Courts Act 1980 s 118(1). These powers are exercisable by any magistrates' court for the same local justice area as the court which made the order: see s 148(2); and **MAGISTRATES** vol 29(2) (Reissue) PARA 583. Where a person has been committed to custody in default of finding sureties and the order to find sureties was made at the instance of another person, an application under s 118 is made by complaint against that other person: Magistrates' Courts Rules 1981, SI 1981/552, r 83. For the forms of summons to vary sureties and recognisance see the Magistrates' Courts (Forms) Rules 1981, SI 1981/553, Sch 2 Forms 116, 117; and **MAGISTRATES** vol 29(2) (Reissue) PARA 505.

The amount of a recognisance fixed by the High Court or the Crown Court may not be altered by a magistrates' court: see the Magistrates' Courts Act 1980 s 119(3) (amended by the Criminal Justice Act 1982 Sch 14 para 55).

3 Magistrates' Courts Act 1980 s 118(2). Magistrates' courts have the power to vary the conditions of bail in criminal proceedings: see the Bail Act 1976 s 3(8), (8A); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1167.

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155. Fixing and taking recognisances.

Where a magistrates' court¹ has power to take any recognisance, the court may, instead of taking it, fix the amount² in which the principal and his sureties³, if any, are to be bound⁴. Thereafter the recognisance may be taken by any such person as may be prescribed⁵, namely any justice of the peace, justices' clerk, designated officer for a magistrates' court, police officer not below the rank of inspector, officer in charge of a police station, or, in cases where the person to be bound is in a prison or other place of detention, the governor or keeper of that prison or place⁶. Where the recognisance of any person committed to custody by a magistrates' court or of any surety of such a person is taken by any person other than the court which committed him to custody, the person taking the recognisance must send it to the designated officer for that court or, if the person committed has been committed for trial before the Crown Court, to the appropriate officer of the Crown Court⁷.

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 The designated officer for a magistrates' court which has fixed the amount in which a person (including any surety) is to be bound by a recognisance or, under the Bail Act 1976 s 3(5), (6), (6A) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1167), imposed any requirement to be complied with before a person's release on bail or any condition of bail must issue a certificate showing the amount and conditions, if any, of the recognisance, or as the case may be, containing a statement of the requirement or condition of bail; and a person authorised to take the recognisance or do anything in relation to the compliance with such requirement or condition of bail must not be required to take or do it without production of such a certificate: Magistrates' Courts Rules 1981, SI 1981/552, r 86(2) (substituted by SI 1984/1552; and amended by SI 2001/610; SI 2003/1236; SI 2005/617).

3 In criminal proceedings regard may be had (amongst other things), when considering the suitability of a proposed surety to the surety's financial resources, character, previous convictions and proximity to the person for whom he is to be surety: Bail Act 1976 s 8(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1172. Where a surety seeks to enter into his recognisance before any person authorised to take it, but that person declines to take his recognisance because he is not satisfied of the surety's suitability, the surety may apply to the court which fixed the amount of the recognisance in which the surety was to be bound, or to a magistrates' court, for that court to take his recognisance and that court must, if satisfied of his suitability, take his recognisance: see s 8(5); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1172.

4 Magistrates' Courts Act 1980 s 119(1). Nothing in s 119 enables a magistrates' court to alter the amount of recognisance fixed by the High Court or the Crown Court: s 119(3) (amended by the Criminal Justice Act 1982 Sch 14 para 55). As to the enforcement of a recognisance see **MAGISTRATES** vol 29(2) (Reissue) PARAS 845-850.

5 Magistrates' Courts Act 1980 s 119(1). Where a recognisance is entered into otherwise than before the court that fixed the amount of it, the same consequences follow as if it had been entered into before that court: s 119(2). References in any Act to the court before which a recognisance was entered into are to be construed accordingly: s 119(2).

6 See the Bail Act 1976 s 8(4)(a); **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1172; and the Magistrates' Courts Rules 1981, SI 1981/552, r 86(1) (amended by SI 2001/167; SI 2005/617). If any person proposed as a surety for a person committed to custody by a magistrates' court produces to the prison governor or keeper of the prison or other place of detention in which the person so committed is detained a certificate to the effect that he is acceptable as a surety, signed by any of the justices composing the court or the clerk of the court and signed in the margin by the person proposed as surety, the governor or keeper must take the recognisance of the person so proposed: Magistrates' Courts Rules 1981, SI 1981/552, r 86(3) (amended by SI 2003/1236).

Where a magistrates' court has, with a view to the release on bail of a person in custody, fixed the amount in which he or any surety of such a person is to be bound or under the Bail Act 1976 s 3(5), (6) or (6A) (see

CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1172) in criminal proceedings, imposed any requirement to be complied with before his release or any condition of bail: (1) the designated officer for the court must give notice to the governor or keeper of the prison or place where that person is detained by sending him such a certificate as is mentioned in the Magistrates' Courts Rules 1981, SI 1981/552, r 86(2) (see note 2); (2) any person authorised to take recognisance of a surety or do anything in relation to the compliance with such requirement must, on taking or doing it, send notice by post to the governor or keeper and, in the case of recognisance of a surety, must give a copy of the notice to the surety: r 87 (amended by SI 1984/1552; SI 2001/610; SI 2003/1236). The governor must then take the defendant's recognisance (if not already taken) and release him, unless he is held for some other cause: see the Magistrates' Courts Rules 1981, SI 1981/552, r 88. See also CrimPR 19.7; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1182.

7 Magistrates' Courts Rules 1981, SI 1981/552, r 86(4) (amended by SI 2001/610; SI 2005/617).

UPDATE

155 Fixing and taking recognisances

NOTE 6--CrimPR 19.7 now Criminal Procedure Rules 2010, SI 2010/60, r 19.7.

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Discharge of recognisance on complaint of surety.

156. Discharge of recognisance on complaint of surety.

On complaint being made to a justice of the peace by a surety to a recognisance to keep the peace or to be of good behaviour entered into before a magistrates' court¹ that the person bound as principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognisance, the justice may issue a warrant to arrest the principal and bring him before a magistrates' court or a summons requiring the principal to appear before such a court². The magistrates' court before which the principal appears or is brought may, unless it adjudges the recognisance to be forfeited³, order the recognisance to be discharged⁴ and order the principal to enter into a new recognisance, with or without sureties, to keep the peace or to be of good behaviour⁵.

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 Magistrates' Courts Act 1980 s 116(1) (amended by the Courts Act 2003 Sch 8 para 236). The warrant must not, however, be issued unless the complaint is in writing and substantiated on oath: Magistrates' Courts Act 1980 s 116(1).

3 As to forfeiture of recognisance see PARA 157.

4 Where a magistrates' court acting in any local justice area makes an order under the Magistrates' Courts Act 1980 s 116 discharging a recognisance entered into before a magistrates' court acting for any other local justice area, the designated officer for the court that orders the recognisance to be discharged must send a copy of the order to the designated officer for the court acting for that other local justice area: Magistrates' Courts Rules, 1981, SI 1981/552, r 82 (amended by SI 2001/610; SI 2005/617).

5 Magistrates' Courts Act 1980 s 116(2).

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157. Forfeiture of recognisance.

Where a recognisance to keep the peace or to be of good behaviour has been entered into before a magistrates' court¹ or any recognisance is conditioned for the appearance of a person before a magistrates' court, or for his doing any other thing connected with a proceeding before it², and the recognisance appears to the magistrates' court to be forfeited, the court may declare it to be forfeited³ and adjudge each person bound by it, whether as principal or surety to pay the sum in which he is bound⁴. Where, in the case of a recognisance which is conditioned for the appearance of an accused before a magistrates' court, the accused fails to appear in accordance with the condition, the magistrates' court may declare the recognisance to be forfeited⁵, and issue a summons directed to each person bound by the recognisance as surety requiring him to appear before the court on a date specified in the summons to show cause why he should not be adjudged to pay the sum in which he is bound⁶, and on that date the magistrates' court may proceed in the absence of any surety if it is satisfied that he has been served with the summons⁷. The magistrates' court which declares the recognisance to be forfeited may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or remit the sum⁸.

A person brought before a magistrates' court on an allegation that he has done any act by which a recognisance entered into by him is liable to be forfeited must be told exactly what the breach complained of is, and there should be precise evidence of it⁹.

1 Magistrates' Courts Act 1980 s 120(1)(a) (s 120(1), (2) substituted, s 120(1A) added, by the Crime and Disorder Act 1998 s 55). As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 Magistrates' Courts Act 1980 s 120(1)(b) (as substituted: see note 1).

3 Magistrates' Courts Act 1980 s 120(2)(a) (as substituted: see note 1). Where a recognisance is conditioned to keep the peace or to be of good behaviour, the magistrates' court must not declare it forfeited except by order made on complaint: s 120(2) proviso (as so substituted).

4 Magistrates' Courts Act 1980 s 120(2)(b) (as substituted: see note 1). A recognisance mentioned in s 120 must not be enforced otherwise than in accordance with s 120, and accordingly must not be transmitted to the Crown Court, nor may its forfeiture be certified to the Crown Court: s 120(5).

In exercising their discretion under the Magistrates' Courts Act 1980 s 120 justices should take into consideration the extent to which the surety has been at fault and should take into account only his own means: *R v Southampton Justices, ex p Green* [1976] QB 11, [1975] 2 All ER 1073, CA; *R v Horseferry Road Magistrates' Court, ex p Pearson* [1976] 2 All ER 264, [1976] 1 WLR 511, DC; *R v Tottenham Magistrates' Court, ex p Riccardi* (1977) 66 Cr App Rep 150. The onus is on the surety to show that he was not at fault and to show reasons why the penalty should not be enforced: *R v Southampton Justices, ex p Corker* (1976) 120 Sol Jo 214, DC. The burden is a heavy one as the court will presume that the full amount of the surety should be forfeited unless it appears fair that a lesser sum be forfeited or none at all: *R v Waltham Forest Justices, ex p Parfrey* (1980) 2 Cr App Rep (S) 208, DC; *R v Crown Court at York, ex p Coleman and Haw* (1987) 86 Cr App Rep 151, [1987] Crim LR 761, DC; *R v Uxbridge Justices, ex p Heward-Mills* [1983] 1 All ER 530, [1983] 1 WLR 56 (obligation of the court to explain to an unrepresented surety that the burden of satisfying the court that the full recognisance should not be forfeited rests on him and that he must lay before the court evidence of his means and lack of culpability). See also *R v Crown Court at Maidstone, ex p Lever*; *R v Crown Court at Maidstone, ex p Connell* [1995] 2 All ER 35, [1995] 1 WLR 928, CA (lack of culpability of surety in failure of accused to stand trial and failure by police to take action which would have resulted in accused standing trial to be taken into account in exercising of discretion to remit part of recognisance, but this does not justify remission of whole or substantial part); *R v Wells Street Magistrates' Court, ex p Albanese* [1982] QB 333, [1981] 3 All ER 769 (where surety to secure attendance is continuous, failure to notify surety of variation of bail conditions does not affect validity of surety, but fact that such a variation may have caused the surety to act differently, or refused to have

continued as a surety if he had been informed, is a matter which should be taken into account by the court when deciding to forfeit the whole of the recognisance) (applied in *R v Crown Court of Inner London, ex p Springall* (1986) 85 Cr App Rep 214, [1987] Crim LR 252). As to ignorance of surety as to the date when accused required to surrender see *R v Crown Court at Reading, ex p Bello* [1992] 3 All ER 353, 92 Cr App Rep 303.

5 Magistrates' Courts Act 1980 s 120(1A)(a) (as added: see note 1).

6 Magistrates' Courts Act 1980 s 120(1A)(b) (as added: see note 1).

7 Magistrates' Courts Act 1980 s 120(1A) (as added: see note 1).

8 Magistrates' Courts Act 1980 s 120(3). The sum should not exceed that which a surety could reasonably pay within three years: *R v Crown at Birmingham, ex p Rashid Ali*; *R v Bristol Magistrates' Court, ex p Davies*; *R v Immigration Appellate Authority, ex p Davies* (1998) 163 JP 145, [1999] Crim LR 504. Justices have a wide power under the Magistrates' Courts Act 1980 s 120 in deciding whether to remit in whole or part a recognisance: *Kaur v DPP* (1999) Times, 5 October.

Payment of any sum adjudged to be paid under the Magistrates' Courts Act 1980 s 120, including any costs awarded against the defendant, may be enforced, and any such sum must be applied, as if it were a fine and as if the adjudication were a summary conviction of an offence not punishable with imprisonment, and so much of s 85(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 862) as empowers a magistrates' court to remit fines does not apply to the sum but so much of it as relates to remission after a term of imprisonment has been imposed applies: s 120(4). However, at any time before the issue of a warrant of commitment to enforce payment of the sum, or before the sale of goods under a warrant of distress (or, as from a day to be appointed, a warrant of control) to satisfy the sum, the magistrates' court may remit the whole or any part of the sum either absolutely or on such conditions as the court thinks just: s 120(4) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 paras 45, 46). As from a day to be appointed warrants of distress are renamed, unless the power they confer is exercisable only against specific goods, 'warrants of control' by the Tribunals, Courts and Enforcement Act 2007 s 62(4)(c); at the date at which this volume states the law no day had been appointed for the commencement of this provision.

9 *R v McGregor* [1945] 2 All ER 180, 30 Cr App Rep 155, CCA. See also *R v Marlow Justices, ex p O'Sullivan* [1984] QB 381, [1983] 3 All ER 578, DC (breach of recognisance to be proved to civil standard of proof except where defendant liable to sentence for an offence as well).

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(3) SURCHARGES

158. Court's duty to order payment of surcharge.

When dealing with¹ a person for one or more offences the court must also, unless it does not impose a fine², order him to pay a surcharge of £15³. Where a court dealing with an offender considers that it would be appropriate to make a compensation order⁴ but that he has insufficient means to pay both the surcharge and the appropriate compensation, the court must reduce the surcharge accordingly (if necessary to nil)⁵.

1 For these purposes, a court does not 'deal with' a person if it discharges him absolutely or makes an order under the Mental Health Act 1983 in respect of him: Criminal Justice Act 2003 s 161A(4) (ss 161A, 161B added by the Domestic Violence, Crime and Victims Act 2004 s 14(1)).

2 Criminal Justice Act 2003 s 161A(2) (as added: see note 1); Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007, SI 2007/1079, art 3.

3 Criminal Justice Act 2003 ss 161A(1), 161B(1) (as added: see note 1); Criminal Justice Act 2003 (Surcharge) (No 2) Order 2007, SI 2007/1079, art 4. The amount of the surcharge as specified by order may depend on the offence or offences committed, how the offender is otherwise dealt with (including, where the offender is fined, the amount of the fine), and the age of the offender: s 161B(2)(a)-(c) (as so added).

Where the Crown Court orders a person to pay a surcharge under s 161A then, if that person is before it, the Crown Court may order him to be searched: Powers of Criminal Courts (Sentencing) Act 2000 s 142(1)(za) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 53(a)). See also PARA 159 note 2.

4 See PARA 375 et seq.

5 Criminal Justice Act 2003 s 161A(3) (as added: see note 1).

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(4) PAYMENT AND COLLECTION

159. Powers and duties of the Crown Court and appellate courts in relation to fines and forfeited recognisances.

Except in the case of a fine imposed on appeal from a magistrates' court¹, if the Crown Court imposes a fine on any person or forfeits his recognisance², the court may make an order:

- 558 (1) allowing time for payment of the amount of the fine or the amount due under the recognisance³;
- 559 (2) directing payment of that amount by instalments of such amounts and on such dates respectively as may be specified in the order⁴;
- 560 (3) in the case of a recognisance, discharging the recognisance or reducing the amount due thereunder⁵.

If the Crown Court imposes a fine on any person or forfeits his recognisance, the court must make an order fixing a term of imprisonment⁶ which he is to undergo if any sum which he is liable to pay is not duly paid or recovered⁷. No person may on the occasion when the fine is imposed on him or his recognisance is forfeited by the Crown Court be committed to prison⁸ in pursuance of such an order unless:

- 561 (a) in the case of an offence punishable with imprisonment, he appears to the court to have sufficient means to pay the sum forthwith⁹;
- 562 (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom¹⁰ to enable payment of the sum to be enforced by other methods¹¹; or
- 563 (c) on the occasion when the order is made, the court sentences him to immediate imprisonment¹² for that or another offence, or so sentences him for an offence in addition to forfeiting his recognisance, or he is already serving a sentence of custody for life or a term of imprisonment¹³, or of detention¹⁴.

These provisions¹⁵ do not apply to a fine imposed by the Crown Court on appeal against a decision of the magistrates' court, but the requirement that the court must make an order fixing a term of imprisonment and the provisions limiting the circumstances in which a person may be committed to prison or detained in pursuance of such an order¹⁶ do apply in relation to a fine imposed or recognisance forfeited by the criminal division of the Court of Appeal or by the Supreme Court¹⁷ on appeal from that division as they apply in relation to a fine imposed or recognisance forfeited by the Crown Court¹⁸.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 139(9).

2 Where the Crown Court imposes a fine on a person or makes a surcharge order (see PARA 158) or forfeits his recognisance, then, if the person is before it, the Crown Court may order him to be searched: Powers of Criminal Courts (Sentencing) Act 2000 s 142(1)(za), (a) (s 142(1)(za) added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 53(a)). Any money found on a person in such a search may be applied, unless the court otherwise directs, towards payment of the fine or other sum payable by him; and the balance, if any, must be returned to him: Powers of Criminal Courts (Sentencing) Act 2000 s 142(2). Where payment of a fine

imposed by any court falls to be enforced as mentioned in the Contempt of Court Act 1981 s 16(1)(b), the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 s 139 apply as they apply to a fine imposed by the Crown Court: see the Contempt of Court Act 1981 s 16(3); and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 504, 508.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 139(1)(a).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 139(1)(b). As to the length of time for payment by instalments see *R v Olliver*, *R v Olliver* (1989) 11 Cr App Rep (S) 10, CA (two years would seldom seem to be too long, and in an appropriate case three years would be unassailable), explaining *R v Hewitt* (1971) 55 Cr App Rep 433, CA (a large fine payable by small instalments over a long period is undesirable). Where a fine is imposed on a company a longer period may be appropriate (*R v Rollco Screw and Rivet Co Ltd* [1999] 2 Cr App Rep (S) 436, [1999] IRLR 439, CA).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 139(1)(c). The power conferred by these provisions to discharge a recognisance or reduce the amount due thereunder is in addition to the powers conferred by any other Act relating to the discharge, cancellation, mitigation or reduction of recognisances or sums forfeited thereunder: s 139(6).

There is no right to make more than one application under s 139(1): *R v Crown Court at Wood Green, ex p Howe* [1992] 3 All ER 366, (1991) 93 Cr App Rep 213, DC.

6 Or, until a day to be appointed, of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see PARA 11): s 139(2) (s 139(2)-(5) prospectively amended by the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 paras 160, 193, Sch 8). At the date at which this volume states the law no day had been appointed for these amendments to come into force.

For the purposes of any reference in the Powers of Criminal Courts (Sentencing) Act 2000 s 139, however expressed, to the term of imprisonment or other detention to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent must, unless the context otherwise requires, be treated as a single term: s 139(10). Any reference in s 139, however expressed, to a previous sentence is to be construed as a reference to a previous sentence passed by a court in Great Britain: s 139(11).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (prospectively amended: see note 6). By virtue of s 139(4) (as so prospectively amended) the following periods are the maximum periods of imprisonment (or, until a day to be appointed, detention (see note 6)) applicable:

- 134 (1) in relation to an amount not exceeding £200, seven days;
- 135 (2) in relation to an amount exceeding £200 but not exceeding £500, 14 days;
- 136 (3) in relation to an amount exceeding £500 but not exceeding £1,000, 28 days;
- 137 (4) in relation to an amount exceeding £1,000 but not exceeding £2,500, 45 days;
- 138 (5) in relation to an amount exceeding £2,500 but not exceeding £5,000, three months;
- 139 (6) in relation to an amount exceeding £5,000 but not exceeding £10,000, six months;
- 140 (7) in relation to an amount exceeding £10,000 but not exceeding £20,000, 12 months;
- 141 (8) in relation to an amount exceeding £20,000 but not exceeding £50,000, 18 months;
- 142 (9) in relation to an amount exceeding £50,000 but not exceeding £100,000, two years;
- 143 (10) in relation to an amount exceeding £100,000 but not exceeding £250,000, three years;
- 144 (11) in relation to an amount exceeding £250,000 but not exceeding £1,000,000, five years;
and
- 145 (12) in relation to an amount exceeding £1,000,000, ten years.

The court should select an appropriate default term rather than simply impose the maximum term: *R v Szrajber* (1994) 15 Cr App Rep (S) 821, CA.

Where any person liable for the payment of a fine or a sum due under a recognisance is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment or detention in a young offender institution (see PARA 85) or a term of detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see PARA 11), the court may order that any term of imprisonment (or, until a day to be appointed, detention (see note 6))

fixed under s 139(2) is not to begin until after the end of the first-mentioned term: s 139(5) (as so prospectively amended).

The powers conferred by s 139 are not to be taken as restricted by any enactment about committal by a magistrates' court to the Crown Court which authorises the Crown Court to deal with an offender in any way in which the magistrates' court might have dealt with him or could deal with him: s 139(7). However, any term fixed under s 139(2) as respects a fine imposed in pursuance of such an enactment, that is to say a fine which the magistrates' court could have imposed, may not exceed the period applicable to that fine (if imposed by the magistrates' court) under the Customs and Excise Management Act 1979 s 149(1) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1191); Powers of Criminal Courts (Sentencing) Act 2000 s 139(8).

If the Crown Court fails to fix a term of imprisonment to be served in default of payment of a fine, the validity of the fine is not affected but the power of the magistrates' court to commit to prison in the event of default is open to question: *R v Hamilton* (1980) 2 Cr App Rep (S) 1, [1980] Crim LR 441, CA.

Where fines are imposed on more than one count, the terms of imprisonment imposed in default of payment may be ordered to run consecutively to each other and consecutively to any term or terms of imprisonment imposed on the same or other counts: *R v Savundranayagan*, *R v Walker* [1968] 3 All ER 439n, 52 Cr App Rep 637, CA.

Where payment by instalments is ordered, the default term should be expressed in default of the whole fine, not in default of each and every instalment: *R v Aitchison and Bentley* (1982) 4 Cr App Rep (S) 404, CA; *R v Power* (1986) 8 Cr App Rep (S) 8, CA.

8 Or, until a day to be appointed, detained (see note 6): see the Powers of Criminal Courts (Sentencing) Act 2000 s 139(3) (prospectively amended: see note 6).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 139(3)(a).

10 As to the meaning of 'United Kingdom' see PARA 9 note 2.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 139(3)(b).

12 Or, until a day to be appointed, custody for life or detention in a young offender institution: Powers of Criminal Courts (Sentencing) Act 2000 s 139(3)(c) (prospectively amended: see note 6).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 139(3)(c)(i).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 139(3)(c)(ii), (iii). The reference to 'detention' is to detention in a young offender institution (see PARA 11) or detention under s 108 (see PARA 11).

15 Ie the Powers of Criminal Courts (Sentencing) Act 2000 s 139.

16 Ie the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2)-(4) (see the text and notes 6-14).

17 As to the Supreme Court see PARA 53 note 1.

18 Powers of Criminal Courts (Sentencing) Act 2000 s 139(9) (amended by the Constitutional Reform Act 2005 Sch 9 para 69).

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160. Recovery and application of fines imposed and recognisances forfeited by the Crown Court and appellate courts.

A fine imposed or a recognisance forfeited by the Crown Court is to be treated for the purposes of collection, enforcement and remission¹ of the fine or other sum as having been imposed or forfeited:

- 564 (1) by a magistrates' court specified in an order made by the Crown Court²; or
- 565 (2) if no such order is made, by the magistrates' court by which the offender was committed to the Crown Court to be tried or to be dealt with or by which he was sent³ to the Crown Court for trial⁴,

and in the case of a fine, as having been so imposed on conviction by the magistrates' court in question⁵.

The term of imprisonment⁶ specified in any warrant of commitment issued by a magistrates' court on default in the payment of a fine imposed, or sum due under a recognisance forfeited, by the Crown Court as the term which the offender is liable to serve is the term fixed by the Crown Court⁷ or, if that term has been reduced⁸, that term as so reduced⁹.

These provisions apply in relation to a fine imposed or a recognisance forfeited by the criminal division of the Court of Appeal or by the Supreme Court on appeal from that division, as they apply in relation to a fine imposed or recognisance forfeited by the Crown Court¹⁰.

Any fine or other sum the payment of which is enforceable by a magistrates' court under these provisions is to be treated¹¹, in particular for the purposes of application of fines and fees¹², as having been imposed by a magistrates' court, or as being due under a recognisance forfeited by such a court¹³.

At common law a fine is a debt of record due to the Crown and remains so until it is paid¹⁴.

1 However, a magistrates' court may not under the Magistrates' Courts Act 1980 s 85(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 862) or s 120 (see PARA 157), as applied by the Powers of Criminal Courts (Sentencing) Act 2000 s 140(1) (see the text and notes 2-5), remit the whole or any part of a fine imposed by, or a sum due under a recognisance forfeited by, the Crown Court (s 140(5)(a)), the criminal division of the Court of Appeal (s 140(5)(b)) or the Supreme Court (s 140(5)(c) (amended by the Constitutional Reform Act 2005 Sch 9 para 69)) without the consent of the Crown Court (Powers of Criminal Courts (Sentencing) Act 2000 s 140(5)). As to the Supreme Court see PARA 53 note 1.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 140(1)(a).

3 See under the Crime and Disorder Act 1998 ss 51, 51A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1132-1133).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 140(1)(b) (amended by the Criminal Justice Act 2003 Sch 3 para 74(1), (4)(b)). As from a day to be appointed this provision is amended so as to provide that, if no order under head (1) in the text is made, a fine imposed or a recognisance forfeited by the Crown Court is to be treated for the purposes of collection, enforcement and remission of the fine or other sum as having been imposed or forfeited for these purposes by the magistrates' court by which the offender was sent to the Crown Court for trial under the Crime and Disorder Act 1998 ss 51, 51A: Powers of Criminal Courts (Sentencing) Act 2000 s 140(1)(b) (as so amended; and prospectively amended by the Criminal Justice Act 2003 Sch 3 para 74(1), (4)(a), Sch 37 Pt 4)). At the date at which this volume states the law no such day had been appointed.

As to collection, enforcement etc see **MAGISTRATES** vol 29(2) (Reissue) PARA 852 et seq. Where payment of a fine imposed by any court falls to be enforced as mentioned in the Contempt of Court Act 1981 s 16(1)(b), the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 s 140 apply as they apply to a fine imposed by the Crown Court: see the Contempt of Court Act 1981 s 16(3); and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 504, 508.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 140(1). To construe this provision as deploying the Magistrates' Courts Act 1980 s 75(2) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 853) for the purpose of collection or enforcement of a confiscation order made in the Crown Court would allow magistrates' courts to vary time which would be contrary to the ordinary principle that a lower court could not disturb an order of a higher court where the lower court was to enforce the order: see *DPP v Greenacre* [2007] EWHC 1193 (Admin), [2008] 1 WLR 438, 171 JP 411.

6 Or, until a day to be appointed, detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (see PARA 11): s 140(3) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 194, Sch 8). At the date at which this volume states the law no such day had been appointed.

7 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (see PARA 159).

8 le under the Magistrates' Courts Act 1980 s 79(2) (part payment) or s 85(2) (power to remit fine) (see **MAGISTRATES** vol 29(2) (Reissue) PARAS 862, 867).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 140(2), (3) (s 140(3) prospectively amended: see note 6). These provisions apply notwithstanding that the applicable term exceeds the period applicable to the case under the Customs and Excise Management Act 1979 s 149(1) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1191): Powers of Criminal Courts (Sentencing) Act 2000 s 140(3) (as so prospectively amended).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 140(4) (amended by the Constitutional Reform Act 2005 Sch 9 para 69).

11 le for the purposes of the Courts Act 2003 (see **COURTS**).

12 le under the Courts Act 2003 s 38 (see **MAGISTRATES**).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 140(6).

14 *Treasury v Harris* [1957] 2 QB 516 at 524, 41 Cr App Rep 146 at 150 (applying *R v Woolf* (1819) 2 B & Ald 609). See also *R v Shackell* (1825) M'Cle & Yo 514.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(4) PAYMENT AND COLLECTION/161. Supervision orders.

161. Supervision orders.

Where any person is adjudged to pay a sum by a summary conviction and the convicting magistrates' court¹ does not commit him to prison forthwith in default of payment, the court may order him to be placed under the supervision of an appointed person for so long as he remains liable to pay the sum or any part of it².

1 As to the meaning of 'magistrates' court' see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

2 See the Magistrates' Courts Act 1980 s 88; and **MAGISTRATES** vol 29(2) (Reissue) PARAS 874-876.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/6. FINES, RECOGNISANCES AND SURCHARGES/(4) PAYMENT AND COLLECTION/162. Attachment of earnings orders.

162. Attachment of earnings orders.

Where any sum is payable under a judgment or order enforceable by a court in England and Wales (not being a magistrates' court) the county court may, on an application for the purpose, make an attachment of earnings order to secure the payment of that sum¹. Such an order operates as an instruction to the judgment debtor's employer to make periodical deductions from the debtor's earnings and pay the amounts deducted to the court².

¹ See the Attachment of Earnings Act 1971 ss 1(2)(b), 2, 3; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1431-1433.

² See the Attachment of Earnings Act 1971 s 6; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1441.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(1) COMMUNITY SENTENCES GENERALLY/163. Community sentences.

7. COMMUNITY SENTENCES

(1) COMMUNITY SENTENCES GENERALLY

163. Community sentences.

At the date at which this volume states the law¹ there are three types of community sentence which may be passed by a court: community orders² and, for young offenders, youth rehabilitation orders, which may be passed in respect of offences committed on or after 30 November 2009³, and youth community orders, which may be passed in respect of offences committed before that date⁴.

Community orders have attached to them one or more of a number of 'requirements' with which the offender must comply⁵, and may be made in respect of offenders aged 16 or over (where the offence was committed before 30 November 2009) or 18 or over (where the offence was committed on or after that date)⁶.

There are five types of youth community order, which may be made in respect of offenders aged under 16 or under 18 depending on the type of order being made⁷, and any one or more of those orders qualifies as a community sentence⁸. Youth community orders are abolished in respect of offences committed on or after 30 November 2009⁹ and are replaced in respect of offences committed on or after that date by youth rehabilitation orders, which may be made in respect of offenders aged under 18 and have attached to them 'requirements' similar to those which may be attached to community orders¹⁰. As from the same date the age limit for community orders (except in the case of certain persistent offenders) is increased from 16 to 18¹¹.

1 See notes 3, 4.

2 As to community orders see the Criminal Justice Act 2003 s 177; and PARA 168 et seq.

3 See the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8), Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(a)-(h), (m)-(o); and PARA 202 et seq.

4 See the Powers of Criminal Courts (Sentencing) Act 2000 s 33(2) (s 33 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 95; repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1); the Criminal Justice Act 2003 s 147(1) (s 147(1) amended, s 147(2) repealed, as from 30 November 2009, by the Criminal Justice and Immigration Act 2008 Sch 4 Pt 1 paras 71, 72, Sch 28 Pt 1); the Criminal Justice and Immigration Act 2008 Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(u)(xxxi); and PARA 229 et seq. The Criminal Justice Act 2003 s 147 came into force on 4 April 2005 and does not apply to an offence committed before that date: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2, Sch 1 para 7, Sch 2 para 5(1), (2); and PARAS 167, 195-201.

For the definitive guideline in relation to community orders see the Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) paras 1.1.1-1.1.47. The guideline applies only to sentences passed under the sentencing framework applicable to those aged 18 or over. Consequently, references in it to 'community sentences' must be read as being limited to community orders.

5 See the Criminal Justice Act 2003 ss 199-215; and PARA 271 et seq.

6 See the Criminal Justice Act 2003 s 177(1); and PARA 169. As to the age of an offender for sentencing purposes see PARA 27. The provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) came into force on 4 April 2005, except in so far as they apply where a person aged 16 or 17 is convicted of an offence, in which event those provisions come into force on 4 April 2010: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2 (amended by SI 2009/616).

7 Specifically, all five types of youth community order (curfew orders, exclusion orders, attendance centre orders, supervision orders and action plan orders: see the Powers of Criminal Courts (Sentencing) Act 2000 s 33(2) (repealed: see note 3); the Criminal Justice Act 2003 s 147(2) (repealed)) may be made in respect of offenders aged under 16, and two of them (supervision orders and action plan orders) may be made in respect of offenders aged between 16 and 18: see PARA 229 et seq.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 33(2) (repealed: see note 3).

9 See notes 3, 10.

10 See the Powers of Criminal Courts (Sentencing) Act 2000 s 33 (repealed: see note 3); the Criminal Justice Act 2003 s 147 (as so amended and repealed); the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8); the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(a)-(h), (m)-(o); and PARA 202 et seq.

11 See the Criminal Justice Act 2003 ss 151, 177; and PARAS 169, 170.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(1) COMMUNITY SENTENCES GENERALLY/164. Restrictions on imposing community sentences.

164. Restrictions on imposing community sentences.

A court¹ must not pass a community sentence² on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated³ with it, was serious enough to warrant such a sentence⁴.

Where a court passes a community sentence in respect of an offence committed on or after 30 November 2009⁵:

- 566 (1) the particular requirement or requirements forming part of the community order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender⁶; and
- 567 (2) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it⁷.

Where a court passes a community sentence which consists of or includes one or more youth community orders⁸:

- 568 (a) the particular order or orders forming part of the sentence must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender⁹; and
- 569 (b) the restrictions on liberty imposed by the order or orders must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it¹⁰.

The fact that by virtue of any of these provisions¹¹ a community sentence may be passed in relation to an offence or particular restrictions on liberty may be imposed by a community order or youth rehabilitation order does not require a court to pass such a sentence or to impose those restrictions¹².

1 As to the meaning of 'court' see PARA 1 note 1.

2 I.e. a community order, a youth community order (where the offence was committed before 30 November 2009) or a youth rehabilitation order (where the offence was committed after that date): see PARA 163.

3 As to an 'associated offence' see PARA 19 note 9.

4 Criminal Justice Act 2003 s 148(1). Section 148(1) has effect subject to s 151(2) (see PARA 170): s 148(4). Section 148 came into force on 4 April 2005, and is of no effect in relation to an offence committed before that date: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 7, Sch 2 para 5(1), (2)(a).

As to pre-sentence and other reports see the Criminal Justice Act 2003 s 156; and PARA 626.

5 In respect of an offence committed before 30 November 2009 the Criminal Justice Act 2003 s 148(2) applies only to community sentences which consist of or include a community order: s 148(2) (s 148(2) amended, s 148(2A) added, s 148(3) repealed, by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 73, Sch 28 Pt 1, subject to a saving for the power to make youth community orders in relation to offences committed before 30 November 2009 and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1)). As to the meaning of 'community order' see PARA 163.

6 Criminal Justice Act 2003 s 148(2)(a) (as amended: see note 5). Section 148(2) is subject to the Criminal Justice and Immigration Act 2008 Sch 1 para 3(4) (youth rehabilitation order with intensive supervision and surveillance: see PARA 204); Criminal Justice Act 2003 s 148(2A) (as so added).

7 Criminal Justice Act 2003 s 148(2)(b). Section 148(2)(b) has effect subject to s 151(2) (see PARA 170); s 148(4); see also note 6.

8 The power to make youth community orders was abolished in relation to offences committed on or after 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1 (see PARA 163), but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; and PARA 229 et seq).

9 Criminal Justice Act 2003 s 148(3)(a) (repealed with savings: see note 5).

10 Criminal Justice Act 2003 s 148(3)(b) (repealed with savings: see note 5).

11 Ie by virtue of any provision of the Criminal Justice Act 2003 s 148 (see the text and notes 1-10).

12 Criminal Justice Act 2003 s 148(5) (added by the Criminal Justice and Immigration Act 2008 s 10).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(1) COMMUNITY SENTENCES GENERALLY/165.
Passing of community sentence on offender remanded in custody.

165. Passing of community sentence on offender remanded in custody.

In determining the restrictions on liberty to be imposed in respect of an offence by a community order¹, a youth rehabilitation order² or a youth community order³, the court⁴ may have regard to any period for which the offender has been remanded in custody⁵ in connection with the offence or any other offence the charge for which was founded on the same facts or evidence⁶.

1 See PARA 168 et seq.

2 See PARA 202 et seq.

3 See PARA 229 et seq.

4 As to the meaning of 'court' see PARA 1 note 1.

5 For these purposes 'remanded in custody' has the same meaning as in the Criminal Justice Act 2003 s 242(2) (see PARA 36 note 5): s 149(2).

6 Criminal Justice Act 2003 s 149(1) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 74, subject to a saving for the power to make youth community orders in relation to offences committed before 30 November 2009 and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1)). The Criminal Justice Act 2003 s 149 came into force on 4 April 2005, and is of no effect in relation to an offence committed before that date: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 7, Sch 2 para 5(1), (2)(a).

The court should seek to give credit for time spent on remand (in custody or equivalent status) in all cases. It should make clear, when announcing sentence, whether or not credit for time on remand has been given (bearing in mind that there is no automatic reduction in sentence now that the Criminal Justice Act 1967 s 67 has been repealed) and should explain its reasons for not giving credit when it considers that this is not justified, would not be practical, or would not be in the best interests of the offender. Where an offender has spent a period of time in custody on remand, there will be occasions where a custodial sentence is warranted but the length of the sentence justified by the seriousness of the offence would mean that the offender would be released immediately. Under the present framework, it may be more appropriate to pass a community sentence since that will ensure supervision on release: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) paras 1.1.37, 1.1.38.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(1) COMMUNITY SENTENCES GENERALLY/166. Community sentence not available where sentence fixed by law etc.

166. Community sentence not available where sentence fixed by law etc.

The power to make a community order¹, a youth rehabilitation order² or a youth community order³ is not exercisable in respect of an offence the sentence for which is⁴:

- 570 (1) a sentence fixed by law⁵;
- 571 (2) a life sentence for public protection⁶;
- 572 (3) the required custodial sentence for possession of a firearm or using a person to mind a weapon⁷;
- 573 (4) the specified minimum term for a third class A drug trafficking offence⁸; or
- 574 (5) the specified minimum term for a third domestic burglary⁹.

1 See PARA 168 et seq.

2 See PARA 202 et seq.

3 See PARA 229 et seq.

4 Criminal Justice Act 2003 s 150 (amended by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 75, subject to a saving for the power to make youth community orders in relation to offences committed before 30 November 2009 and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1)). The Criminal Justice Act 2003 s 150 came into force on 4 April 2005, and is of no effect in relation to an offence committed before that date: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 7, Sch 2 para 5(1), (2)(a).

5 Criminal Justice Act 2003 s 150(a). As to sentences fixed by law see PARA 15.

6 Criminal Justice Act 2003 s 150(d) (amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 59, 65). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 4.

7 Criminal Justice Act 2003 s 150(b), (ca) (s 150(ca) added by the Violent Crime Reduction Act 2006 Sch 1 para 9(1), (3)). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

8 Criminal Justice Act 2003 s 150(c). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

9 Criminal Justice Act 2003 s 150(c). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7, noting that by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 164(3)(a) and the Criminal Justice Act 2003 s 305(4)(b) (cited), these provisions do not, in fact, completely exclude the making of a community sentence in these circumstances (see *R v Burns* [2009] EWCA Crim 1907, [2009] All ER (D) 27 (Sep)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(1) COMMUNITY SENTENCES GENERALLY/167. Adult community orders for offences committed before 4 April 2005.

167. Adult community orders for offences committed before 4 April 2005.

Prior to 4 April 2005¹ a person aged 16 or over who was convicted of an offence could be made the subject of a community rehabilitation order², a community punishment order³, a community punishment and rehabilitation order⁴ or a drug treatment and testing order⁵, while a person aged 18 or over who was convicted of an offence could be made the subject of a drug abstinence order⁶. The first three of these orders⁷ replaced probation orders⁸, community service orders⁹ and combination orders¹⁰, and all of these orders have been replaced, in respect of offences committed after 4 April 2005, by the community orders described in the Criminal Justice Act 2003¹¹.

1 Ie the date on which the former system of adult community orders described in this paragraph was replaced by the existing system of adult community orders introduced by the Criminal Justice Act 2003 (see s 177; and PARAS 163, 169) by virtue of the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 1 para 8, Sch 2 para 5.

2 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 41, 42, 45 (as enacted immediately prior to 4 April 2005); and PARA 195.

3 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 46, 47, 50 (as enacted immediately prior to 4 April 2005); and PARA 196.

4 See the Powers of Criminal Courts (Sentencing) Act 2000 s 51 (as enacted immediately prior to 4 April 2005); and PARA 197.

5 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 52-55, 57, 58 (as enacted immediately prior to 4 April 2005); and PARA 198.

6 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 58A, 58B (as enacted immediately prior to 4 April 2005); and PARA 201.

7 Ie community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders: see the text and notes 1-4.

8 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 41 (repealed).

9 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 46 (repealed).

10 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 51 (repealed).

11 See the Criminal Justice Act 2003 s 177; and PARAS 163, 168.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/168. Power to make community orders.

(2) COMMUNITY ORDERS

(i) Making of Community Order

168. Power to make community orders.

The power to make a community order is exercisable in relation to offences punishable with imprisonment¹ and, in certain other circumstances², in respect of persistent offenders³. The effect of a community order is to impose on the offender one or more requirements with which he must comply for the duration of the order⁴.

1 Criminal Justice Act 2003 s 150A(1)(a) (s 150A added by the Criminal Justice and Immigration Act 2008 s 11(1)). For the purposes of the Criminal Justice Act 2003 ss 150A, 151 (see PARAS 168, 170) an offence triable either way that was tried summarily is to be regarded as punishable with imprisonment only if it is so punishable by the sentencing court (and for this purpose s 148(1) (see PARA 164) is to be disregarded): s 150A(2) (as so added).

2 In the case where the Criminal Justice Act 2003 s 151(2) confers power to make such order: see PARA 170.

3 Criminal Justice Act 2003 s 150A(1)(b) (as added: see note 1). In connection with the sentencing of persistent offenders see PARA 168.

4 See PARA 171. The court by which a community order is made must forthwith provide copies of the order:

146 (1) to the offender (Criminal Justice Act 2003 s 219(1)(a));

147 (2) if the offender is aged 18 or over, to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court (s 219(1)(b) (amended by SI 2008/912));

148 (3) if the offender is aged 16 or 17, to an officer of a local probation board assigned to the court, an officer of a provider of probation services acting at the court or a member of a youth offending team assigned to the court (Criminal Justice Act 2003 s 219(1)(c) (amended by SI 2008/912)); and

149 (4) where the order specifies a local justice area in which the court making the order does not act, to the local probation board acting for that area or, as the case may be, a provider of probation services acting in that area (Criminal Justice Act 2003 s 219(1)(d) (amended by SI 2005/886; SI 2008/912)).

Provision is also made as to the provision of copies to the persons concerned with the supervision of requirements imposed by an order: see the Criminal Justice Act 2003 s 219(2), Sch 14; and PARAS 272, 276-279, 280-284. See also s 219(3); and PARA 171 note 22. As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/169. Age limits for community orders.

169. Age limits for community orders.

Where a person is convicted of an offence committed on or after 30 November 2009 the court¹ by or before which he is convicted may make a community order² in relation to him if he is aged 18 or over³; where the offence was committed before that date, the court may make a community order in relation to the person if he is aged 16 or over⁴. In certain circumstances a community order may be made in respect of a persistent offender who is under the specified age⁵.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to community orders see PARA 168. As to community sentences generally, and the age groups in relation to which the court may impose such sentences, see PARA 163.

3 As to the age of an offender for sentencing purposes see PARA 27.

4 Criminal Justice Act 2003 s 177(1) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 82, subject to a saving in relation to offences committed before 30 November 2009 and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1)). As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

5 See PARA 170.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/170. Persistent offenders.

170. Persistent offenders.

Provision is made for a community order to be made in respect of a persistent offender¹.

Where a court² convicts a person of an offence (the 'current offence') and the person is aged 18 or over³ (where the offence was committed on or after 30 November 2009) or 16 or over (where the offence was committed before that date) the court may make a community order in respect of that offence instead of imposing a fine⁴ if:

- 575 (1) until a day to be appointed⁵, on three or more previous occasions he has, on conviction by a court in the United Kingdom⁶ of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine, or, as from that day, on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16 or by a court in another member state of a relevant offence so committed⁷;
- 576 (2) the court would not⁸ otherwise regard the current offence, or the combination of the current offence and one or more offences associated⁹ with it, as being serious enough to warrant a community sentence¹⁰; and
- 577 (3) the court considers that, having regard to all the circumstances¹¹, it would be in the interests of justice to make such an order¹².

As from day to be appointed the provisions described above¹³ continue to apply in respect of a person aged 16 or over who is convicted in respect of an offence which is punishable by imprisonment¹⁴, and it is also provided that a court which convicts a person aged 18 or over (where the offence was committed on or after 30 November 2009) or 16 or over (where the offence was committed before that date)¹⁵ of an offence which is not punishable with imprisonment¹⁶ may make a community order in respect of that offence instead of imposing a fine if (until a day to be appointed¹⁷) on three or more previous occasions the offender has, on conviction by a court in the United Kingdom¹⁸ of any offence committed by him after attaining the applicable age¹⁹, had passed on him a sentence consisting only of a fine or (as from that day) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16 or by a court in another member state of a relevant offence so committed²⁰ and the court considers that, having regard to all the circumstances²¹, it would be in the interests of justice to make such an order²².

1 See the Criminal Justice Act 2003 s 151. At the date at which this volume states the law no day had been appointed for the commencement of s 151. As to community orders see PARA 168. As to community sentences generally, and the age groups in relation to which the court may impose such sentences, see PARA 163.

2 As to the meaning of 'court' see PARA 1 note 1.

3 As to the age of an offender for sentencing purposes see PARA 27.

4 Criminal Justice Act 2003 s 151(1)(a), (2) (s 151(1) amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 76, subject to a saving in relation to offences committed before 30 November 2009 and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1); prospectively amended by the Criminal Justice and Immigration Act 2008 s 11; and also prospectively amended

by the Coroners and Justice Act 2009 Sch 17 para 8). At the date at which this volume states the law no day had been appointed for the coming into force of the amendments referred to as prospective.

5 See note 7.

6 As to the meaning of 'United Kingdom' see PARA 9 note 2. The reference in the Criminal Justice Act 2003 s 151(1)(b) (and s 151(2A)(b): see PARA 206) to conviction by a court in the United Kingdom includes a reference to a conviction in service disciplinary proceedings: s 151(4) (s 151(4), (5) amended, and s 151(8) added, by the Armed Forces Act 2006 Sch 16 para 217). A compensation order, a service compensation order awarded in service disciplinary proceedings or a surcharge order under the Criminal Justice Act 2003 s 161A (see PARA 158) does not, for these purposes, form part of an offender's sentence: s 151(5) (as so amended; and also amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 63).

For these purposes 'service disciplinary proceedings' means:

- 150 (1) until a day to be appointed, proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (see s 50(2); and **ARMED FORCES**), and as from that day, proceedings (whether or not before a court) in respect of a service offence or a member state service offence (Criminal Justice Act 2003 s 151(8)(a) (as so added; and s 151(8)(a), (b) prospectively amended by the Coroners and Justice Act 2009 Sch 17 para 8)); and
- 151 (2) any reference to conviction or sentence, in the context of service disciplinary proceedings (ie, as from a day to be appointed, other than proceedings for a member state service offence), includes anything that under the Armed Forces Act 2006 s 376(1)-(3) (see **ARMED FORCES**) is to be treated as a conviction or sentence: Criminal Justice Act 2003 s 151(8)(b) (as so added and prospectively amended).

As from a day to be appointed:

- 152 (a) 'member state service offence' means an offence which was the subject of proceedings under the service law of a member state other than the United Kingdom and would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence (s 151(8)(c) (s 151(8)(c)-(f) prospectively added by the Coroners and Justice Act 2009 Sch 17 para 8));
- 153 (b) 'Her Majesty's forces' has the same meaning as in the Armed Forces Act 2006 (see **ARMED FORCES**) (Criminal Justice Act 2003 s 151(8)(d) (as so prospectively added));
- 154 (c) 'service law', in relation to a member state other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State (s 151(8)(e) (as so prospectively added)); and
- 155 (d) 'service offence' has the same meaning as in the Armed Forces Act 2006 (see **ARMED FORCES**) (Criminal Justice Act 2003 s 151(8)(f) (as so prospectively added)).

At the date at which this volume states the law no day had been appointed for the coming into force of these prospective amendments.

7 Criminal Justice Act 2003 s 151(1)(b) (as amended: see note 4). For these purposes, it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine: s 151(6). As from a day to be appointed, for the purposes of s 151(1)(b), (1A)(c), (2A)(b), an offence is 'relevant' if the offence would constitute an offence under the law of any part of the United Kingdom if it were done there at the time of the conviction of the defendant for the current offence: s 151(4A) (prospectively added by the Coroners and Justice Act 2009 Sch 17 para 8). At the date at which this volume states the law, no such day had been appointed.

8 Ie despite the effect of the Criminal Justice Act 2003 s 143(2) (see PARA 618). Section 151 does not limit the extent to which a court may, in accordance with s 143(2), treat any previous convictions of the offender as increasing the seriousness of an offence: s 151(7).

9 As to an 'associated offence' see PARA 19 note 9.

10 Criminal Justice Act 2003 s 151(1)(c).

11 Ie including the nature of the offences to which the previous convictions mentioned in the Criminal Justice Act 2003 s 151(1)(b) (see the text and notes 5-7) relate and their relevance to the current offence and the time that has elapsed since the offender's conviction of each of those offences: s 151(3).

12 Criminal Justice Act 2003 s 151(2).

13 Ie the Criminal Justice Act 2003 s 151(1)(a)-(c), (2): see the text and notes 1-12.

14 Criminal Justice Act 2003 s 151(A1), (1)(za), (a)-(c), (2) (s 151(A1) prospectively added by the Criminal Justice and Immigration Act 2008 s 11; the Criminal Justice Act 2003 s 151(1) as amended (see note 4)). At the date at which this volume states the law no day had been appointed for the coming into force of the amendments referred to as prospective.

15 The provisions of the Criminal Justice Act 2003 s 151(1A)(b), (c) are amended, so as to increase the age referred to therein from 16 to 18 in respect of offences committed on or after 30 November 2009 (and subject to the saving referred to in note 4), by the Criminal Justice and Immigration Act 2008 Sch 4 para 76: see notes 16, 20.

16 Criminal Justice Act 2003 s 151(1A)(a), (b) (s 151(1A) prospectively added by the Criminal Justice and Immigration Act 2008 s 11; and amended with savings by the Criminal Justice and Immigration Act 2008 Sch 4 para 76). At the date at which this volume states the law no day had been appointed for the coming into force of the amendments referred to as prospective.

17 See note 20.

18 The reference in the Criminal Justice Act 2003 s 151(1A)(c) to conviction by a court in the United Kingdom includes a reference to a conviction in service disciplinary proceedings: s 151(4) (amended with savings by the Criminal Justice and Immigration Act 2008 Sch 4 para 76). A compensation order, a service compensation order awarded in service disciplinary proceedings or a surcharge order under the Criminal Justice Act 2003 s 161A (see PARA 158) does not, for these purposes, form part of an offender's sentence: s 151(5) (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 63; and amended with savings by the Criminal Justice and Immigration Act 2008 Sch 4 para 76). As to 'service disciplinary proceedings' and references to conviction or sentence in the context of service disciplinary proceedings see note 6.

19 See note 15.

20 Criminal Justice Act 2003 s 151(1A)(c) (prospectively added (see note 16); prospectively substituted by the Coroners and Justice Act 2009 Sch 17 para 8; and amended with savings by the Criminal Justice and Immigration Act 2008 Sch 4 para 76). For these purposes, it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine: Criminal Justice Act 2003 s 151(6) (prospectively amended by the Criminal Justice and Immigration Act 2008 s 11; and amended with savings by the Criminal Justice and Immigration Act 2008 Sch 4 para 76). At the date at which this volume states the law no day had been appointed for the coming into force of the amendments referred to as prospective.

21 Ie including the nature of the offences to which the previous convictions mentioned in the Criminal Justice Act 2003 s 151(1A)(c) (see the text and notes 17-19) relate and their relevance to the current offence and the time that has elapsed since the offender's conviction of each of those offences: s 151(3) (amended with savings by the Criminal Justice and Immigration Act 2008 Sch 4 para 76).

22 Criminal Justice Act 2003 s 151(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/171. Requirements which may be imposed.

171. Requirements which may be imposed.

A community order¹ may impose on the offender any one or more of the following requirements²:

- 578 (1) an unpaid work requirement³;
- 579 (2) an activity requirement⁴;
- 580 (3) a programme requirement⁵;
- 581 (4) a prohibited activity requirement⁶;
- 582 (5) a curfew requirement⁷;
- 583 (6) an exclusion requirement⁸;
- 584 (7) a residence requirement⁹;
- 585 (8) a mental health treatment requirement¹⁰;
- 586 (9) a drug rehabilitation requirement¹¹;
- 587 (10) an alcohol treatment requirement¹²;
- 588 (11) a supervision requirement¹³;
- 589 (12) in a case where the offender is aged under 25¹⁴, an attendance centre requirement¹⁵.

Where the court¹⁶ makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement¹⁷ unless it is prevented¹⁸ from doing so or unless, in the particular circumstances of the case, it considers it inappropriate to do so¹⁹. Where the court makes a community order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented²⁰ from doing so²¹.

A community order must specify the local justice area in which the offender resides or will reside²².

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169. As to community sentences generally see PARA 163.

2 The Criminal Justice Act 2003 s 177(1) has effect subject to s 150 (see PARA 166) and s 218 (see PARAS 271-272, 283-284), and, in connection with particular requirements, to s 199(3) (unpaid work requirement: see PARA 271), s 201(3), (4) (activity requirement: see PARA 272), s 202(4), (5) (programme requirement: see PARA 273), s 203(2) (prohibited activity requirement: see PARA 274), s 207(3) (mental health treatment requirement: see PARA 278), s 209(2) (drug rehabilitation requirement: see PARA 279), s 212(2), (3) (alcohol treatment requirement: see PARA 281): s 177(2). Before making a community order imposing two or more different requirements the court must consider whether, in the circumstances of the case, the requirements are compatible with each other: s 177(6).

As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

Three sentencing ranges (low, medium and high) within the community sentence band can be identified. It is not possible to position particular types of offence at firm points within the three ranges because the seriousness level of an offence is largely dependent upon the culpability of the offender and this is uniquely variable: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) para 1.1.20.

In general terms, the lowest range of community sentence would be for those offenders whose offence was relatively minor within the community sentence band and would include persistent petty offenders whose offences only merit a community sentence by virtue of failing to respond to the previous imposition of fines. Such offenders would merit a 'light touch' approach, eg normally a single requirement such as a short period of unpaid work, or a curfew, or a prohibited activity requirement or an exclusion requirement (where the circumstances of the case mean that this would be an appropriate disposal without electronic monitoring: as to the requirements). The top range would be for those offenders who have only just fallen short of a custodial sentence and for those who have passed the threshold but for whom a community sentence is deemed appropriate. The decision on the nature and severity of the requirements to be included in a community sentence should be guided by: (1) the assessment of offence seriousness (low, medium or high); (2) the purpose(s) of sentencing the court wishes to achieve; (3) the risk of re-offending; (4) the ability of the offender to comply; and (5) the availability of requirements in the local area. The resulting restriction on liberty must be a proportionate response to the offence that was committed: *New Sentences: Criminal Justice Act 2003* paras 1.1.21-1.1.23.

The guideline contains a non-exhaustive description of examples of requirements that might be appropriate in the three sentencing ranges: see *New Sentences: Criminal Justice Act 2003* paras 1.1.25-1.1.32. These examples focus on punishment in the community; the guideline recognises that not all packages will necessarily require a punitive requirement and that there will clearly be other requirements of a rehabilitative nature, such as a treatment requirement or an accredited programme, which may be appropriate in a particular case, normally at medium and high levels of seriousness, and where assessed as having a medium or high risk of re-offending. In addition, when passing sentence in any one of the three ranges, the court should consider whether a rehabilitative intervention, such as a programme requirement, or a restorative justice intervention might be suitable as an additional or alternative part of the sentence: *New Sentences: Criminal Justice Act 2003* para 1.1.24.

The examples of requirements that might be appropriate in the low sentencing range are as follows. For offences only just crossing the community sentence threshold (such as persistent petty offending, some public order offences, some thefts from shops, or interference with a motor vehicle, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate), suitable requirements might include: 40 to 80 hours of unpaid work; or a curfew requirement within the lowest range (eg up to 12 hours per day for a few weeks); or an exclusion requirement (where the circumstances of the case mean that this would be an appropriate disposal without electronic monitoring) lasting a few months; or a prohibited activity requirement; or an attendance centre requirement (where available). Since the restriction on liberty must be commensurate with the seriousness of the offence, particular care needs to be taken with this band to ensure that this obligation is complied with. In most cases, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary.

The examples of requirements that might be appropriate in the medium sentencing range are as follows. For offences that obviously fall within the community sentence band such as handling stolen goods worth less than £1,000 acquired for resale or somewhat more valuable goods acquired for the handler's own use, some cases of burglary in commercial premises, some cases of taking a motor vehicle without consent, or some cases of obtaining property by deception, suitable requirements might include: a greater number (eg 80 to 150) of hours of unpaid work; or an activity requirement in the middle range (20 to 30 days); or a curfew requirement within the middle range (eg up to 12 hours for two to three months); or an exclusion requirement lasting in the region of six months; or a prohibited activity requirement. Since the restriction on liberty must be commensurate with the seriousness of the offence, particular care needs to be taken with this band to ensure that this obligation is complied with.

The examples of requirements that might be appropriate in the high sentencing range are as follows. For offences that only just fall below the custody threshold or where the custody threshold is crossed but a community sentence is more appropriate in all the circumstances, eg some cases displaying the features of a standard domestic burglary committed by a first-time offender, more intensive sentences which combine two or more requirements may be appropriate. Suitable requirements might include: an unpaid work order of between 150 and 300 hours; an activity requirement up to the maximum 60 days; an exclusion order lasting in the region of 12 months; a curfew requirement of up to 12 hours a day for four to six months.

- 3 le as defined by the Criminal Justice Act 2003 s 199 (see PARA 271): s 177(1)(a).
- 4 le as defined by the Criminal Justice Act 2003 s 201 (see PARA 272): s 177(1)(b).
- 5 le as defined by the Criminal Justice Act 2003 s 202 (see PARA 273): s 177(1)(c).
- 6 le as defined by the Criminal Justice Act 2003 s 203 (see PARA 274): s 177(1)(d).
- 7 le as defined by the Criminal Justice Act 2003 s 204 (see PARA 275): s 177(1)(e).
- 8 le as defined by the Criminal Justice Act 2003 s 205 (see PARA 276): s 177(1)(f).
- 9 le as defined by the Criminal Justice Act 2003 s 206 (see PARA 277): s 177(1)(g).

- 10 le as defined by the Criminal Justice Act 2003 s 207 (see PARA 278): s 177(1)(h).
- 11 le as defined by the Criminal Justice Act 2003 s 209 (see PARA 279): s 177(1)(i).
- 12 le as defined by the Criminal Justice Act 2003 s 212 (see PARA 281): s 177(1)(j).
- 13 le as defined by the Criminal Justice Act 2003 s 213 (see PARA 282): s 177(1)(k).
- 14 As to the age of an offender for sentencing purposes see PARA 27.
- 15 le as defined by the Criminal Justice Act 2003 s 214 (see PARA 283): s 177(1)(l).
- 16 As to the meaning of 'court' see PARA 1 note 1.
- 17 le as defined by the Criminal Justice Act 2003 s 215 (see PARA 284). Electronic monitoring should be used with the primary purpose of promoting and monitoring compliance with other requirements, in circumstances where the punishment of the offender and/or the need to safeguard the public and prevent re-offending are the most important concerns: *New Sentences: Criminal Justice Act 2003* para 1.1.33.
- 18 le by the Criminal Justice Act 2003 s 215(2) (see PARA 284) or s 218(4) (see PARA 284).
- 19 Criminal Justice Act 2003 s 177(3).
- 20 See note 18.
- 21 Criminal Justice Act 2003 s 177(4).
- 22 Criminal Justice Act 2003 s 216(1) (amended by SI 2005/886). Where an order specifies a local justice area in which the court making the order does not act, the court making the order must provide to the magistrates' court acting in that area a copy of the order and documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Criminal Justice Act 2003 s 219(3) (amended by SI 2005/886).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/172. Requirement to avoid conflict with religious beliefs and education.

172. Requirement to avoid conflict with religious beliefs and education.

The court must ensure, as far as practicable, that any requirement imposed by a community order¹ is such as to avoid:

590 (1) any conflict with the offender's religious beliefs or with the requirements of any other relevant order² to which he may be subject³; and

591 (2) any interference with the times, if any, at which he normally works or attends an educational establishment⁴.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169. As to community sentences generally see PARA 163.

2 I.e. a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

3 Criminal Justice Act 2003 s 217(1)(a). The Secretary of State may by order provide that the Criminal Justice Act 2003 s 217(1) is to have effect with such additional restrictions as may be specified in the order: s 217(3). At the date at which this volume states the law no such order had been made.

4 Criminal Justice Act 2003 s 217(1)(b) (amended by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 91).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/173. Time limits for compliance with requirements.

173. Time limits for compliance with requirements.

A community order¹ must specify a date, not more than three years after the date of the order, by which all requirements² in it must have been complied with; and a community order which imposes two or more different requirements may also specify an earlier date or dates in relation to compliance with any one or more of them³.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169.

2 As to the requirements see PARA 171.

3 Criminal Justice Act 2003 s 177(5). As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/174. Duty of offender to keep in touch with responsible officer.

174. Duty of offender to keep in touch with responsible officer.

An offender in respect of whom a community order¹ is in force must keep in touch with the responsible officer² in accordance with such instructions as he may from time to time be given by that officer³ and must notify him of any change of address⁴.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169.

2 As to the meaning of 'responsible officer' see the Criminal Justice Act 2003 s 197; and PARA 104 note 7.

3 Criminal Justice Act 2003 s 220(1)(a). The obligation imposed by s 220(1) is enforceable as if it were a requirement imposed by the order: s 220(2). As to the community requirements see s 190(1); and PARA 112.

4 Criminal Justice Act 2003 s 220(1)(b). See note 3.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(i) Making of Community Order/175. Periodical review of orders.

175. Periodical review of orders.

The Secretary of State may by order:

- 592 (1) enable or require a court¹ making a community order² to provide for the order to be reviewed periodically by that or another court³;
- 593 (2) enable a court to amend a community order so as to include or remove a provision for review by a court⁴; and
- 594 (3) make provision as to the timing and conduct of reviews and as to the powers of the court on a review⁵.

1 As to the meaning of 'court' see PARA 1 note 1.

2 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169.

3 Criminal Justice Act 2003 s 178(1)(a). At the date at which this volume states the law one such order had been made: see the Community Order (Review by Specified Courts) Order 2007, SI 2007/2162. Such an order may, in particular, make provision in relation to community orders corresponding to any provision made by the Criminal Justice Act 2003 ss 191, 192 (see PARA 115) in relation to suspended sentence orders (s 178(2)) and may repeal or amend any provision of Pt 12 (ss 142-305) (s 178(3)).

4 Criminal Justice Act 2003 s 178(1)(b). See note 3.

5 Criminal Justice Act 2003 s 178(1)(c). See note 3.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(ii) Breach of Requirement of Community Order/176. Duty to give warning and subsequent breach.

(ii) Breach of Requirement of Community Order

176. Duty to give warning and subsequent breach.

If the responsible officer¹ is of the opinion that the offender² has failed without reasonable excuse to comply with any of the requirements of a community order³, the officer must give him a warning unless:

- 595 (1) the offender has within the previous 12 months been given such a warning in relation to a failure to comply with any of the requirements of the order⁴; or
- 596 (2) the officer causes an information to be laid before a justice of the peace⁵ in respect of the failure⁶.

The warning must:

- 597 (a) describe the circumstances of the failure⁷;
- 598 (b) state that the failure is unacceptable⁸; and
- 599 (c) inform the offender that, if within the next 12 months he again fails to comply with any requirement of the order, he will be liable to be brought before a court⁹.

The responsible officer must, as soon as practicable after the warning has been given, record that fact¹⁰.

If:

- 600 (i) the responsible officer has given such a warning to the offender in respect of a community order¹¹; and
- 601 (ii) at any time within the 12 months beginning with the date on which the warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the requirements of the order¹²,

the officer must cause an information to be laid before a justice of the peace¹³ in respect of the failure in question¹⁴.

1 As to the meaning of 'responsible officer' see PARA 104 note 7.

2 The 'offender' is the person in respect of whom a community order is made: Criminal Justice Act 2003 Sch 8 para 1. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARA 171. For the purposes of the Criminal Justice Act 2003 Sch 8 a requirement falling within any of s 177(1)(a)-(l) (see PARA 171) is of the same kind as any other requirement falling within those provisions and an electronic monitoring requirement is a requirement of the same kind as any requirement falling within s 177(1) to which it relates: Sch 8 para 3.

Failure to comply with an order may lead to a loss or reduction in benefits: see the Child Support, Pensions and Social Security Act 2000 ss 62, 64; and **SOCIAL SECURITY AND PENSIONS**.

4 Criminal Justice Act 2003 Sch 8 para 5(1)(a).

5 In relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, this reference to a justice of the peace is to be read as a reference to the Crown Court: Criminal Justice Act 2003 Sch 8 para 5(4).

Where a community order has been made on appeal, it is to be taken for the purposes of Sch 8 to have been made by the Crown Court: Sch 8 para 4.

6 Criminal Justice Act 2003 Sch 8 para 5(1)(b).

7 Criminal Justice Act 2003 Sch 8 para 5(2)(a).

8 Criminal Justice Act 2003 Sch 8 para 5(2)(b).

9 Criminal Justice Act 2003 Sch 8 para 5(2)(c).

10 Criminal Justice Act 2003 Sch 8 para 5(3).

11 Criminal Justice Act 2003 Sch 8 para 6(1)(a).

12 Criminal Justice Act 2003 Sch 8 para 6(1)(b).

13 In relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, this reference to a justice of the peace is to be read as a reference to the Crown Court: Criminal Justice Act 2003 Sch 8 para 6(2).

14 Criminal Justice Act 2003 Sch 8 para 6(1).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(ii) Breach of Requirement of Community Order/177. Issue of summons or warrant.

177. Issue of summons or warrant.

If at any time while:

- 602 (1) a community order¹ made by a magistrates' court²; or
- 603 (2) any community order which was made by the Crown Court and includes a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court³,

is in force it appears on information to a justice of the peace that the offender⁴ has failed to comply with any of the requirements of the order, the justice may issue a summons requiring the offender to appear at the place and time specified in it⁵ or, if the information is in writing and on oath, issue a warrant for his arrest⁶. Any such summons or warrant must direct the offender to appear or be brought:

- 604 (a) in the case of a community order imposing a drug rehabilitation requirement which is subject to review⁷, before the magistrates' court responsible for the order⁸; or
- 605 (b) in any other case, before a magistrates' court acting in the local justice area⁹ in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned¹⁰.

If at any time while a community order made by the Crown Court, which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, is in force it appears on information to the Crown Court that the offender has failed to comply with any of the requirements of the order, the Crown Court may issue a summons requiring the offender to appear at the place and time specified in it¹¹ or, if the information is in writing and on oath, issue a warrant for his arrest¹². Any such summons or warrant must direct the offender to appear or be brought before the Crown Court¹³.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3.

2 Criminal Justice Act 2003 Sch 8 para 7(1)(a). As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 Criminal Justice Act 2003 Sch 8 para 7(1)(b). Where a community order has been made on appeal, it is to be taken for the purposes of Sch 8 to have been made by the Crown Court: Sch 8 para 4.

4 As to the meaning of 'offender' see PARA 176 note 2.

5 Criminal Justice Act 2003 Sch 8 para 7(2)(a) (Sch 8 para 7(2) amended by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 7(1), (2); and SI 2005/886). Where such a summons requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender: Criminal Justice Act 2003 Sch 8 para 7(4).

6 Criminal Justice Act 2003 Sch 8 para 7(2)(b) (as amended: see note 5).

7 References to a drug rehabilitation requirement of a community order being subject to review are references to that requirement being subject to review in accordance with the Criminal Justice Act 2003 s 210(1)(b) (see PARA 279): Sch 8 para 2(a).

8 Criminal Justice Act 2003 Sch 8 para 7(3)(a). References to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review are to be construed in accordance with s 210(2) (see PARA 280): Sch 8 para 2(b).

9 le the local justice area for the time being specified in the order: Criminal Justice Act 2003 Sch 8 para 1 (amended by SI 2005/886).

10 Criminal Justice Act 2003 Sch 8 para 7(3)(b) (substituted by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 7(1), (3); and amended by SI 2005/886). 'Local justice area concerned' means the local justice area for the time being specified in the order: Criminal Justice Act 2003 Sch 8 para 1 (amended by SI 2005/886).

11 Criminal Justice Act 2003 Sch 8 para 8(1), (2)(a). Where such a summons requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender: Sch 8 para 8(4).

12 Criminal Justice Act 2003 Sch 8 para 8(2).

13 Criminal Justice Act 2003 Sch 8 para 8(3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(ii) Breach of Requirement of Community Order/178. Powers of magistrates' court.

178. Powers of magistrates' court.

If it is proved¹ to the satisfaction of a magistrates' court before which an offender² appears or is brought³ that he has failed without reasonable excuse⁴ to comply with any of the requirements of a community order⁵, the court must deal with him in respect of the failure in any one of the following ways:

- 606 (1) by amending the terms of the community order so as to impose more onerous requirements which the court could include if it were then making the order⁶;
- 607 (2) where the community order was made by a magistrates' court, by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence⁷; or
- 608 (3) where:
 - 11 39. (a) the community order was made by a magistrates' court⁸;
 - 40. (b) the offence in respect of which the order was made was not an offence punishable by imprisonment⁹;
 - 41. (c) the offender is aged 18¹⁰ or over¹¹; and
 - 42. (d) the offender has wilfully and persistently failed to comply with the requirements of the order¹²,
- 12 609 by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, until a day to be appointed¹³, a sentence of detention in a young offender institution¹⁴ for a term not exceeding six months (or, as from a day to be appointed¹⁵, 51 weeks)¹⁶.

In so dealing with an offender, a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order¹⁷.

Where a magistrates' court deals with an offender under head (2) or head (3) above, it must revoke the community order if it is still in force¹⁸. Where a community order was made by the Crown Court and a magistrates' court would otherwise¹⁹ be required to deal with the offender under heads (1) to (3) above, it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court²⁰. A person sentenced under head (2) or head (3) above for an offence may appeal to the Crown Court against the sentence²¹.

1 The prosecution must prove each element of the breach beyond reasonable doubt, including proving that the defendant was the person named in the order: *West Yorkshire Probation Board v Boulter* [2005] EWHC 2342 (Admin), [2006] 1 WLR 232, 169 JP 601.

2 As to the meaning of 'offender' see PARA 176 note 2.

3 I.e. under the Criminal Justice Act 2003 Sch 8 para 7 (see PARA 177). A magistrates' court may adjourn any hearing relating to an offender in any proceedings under Sch 8, and that where it does so the court may direct that the offender be released forthwith or remand the offender: Sch 8 para 25A(1), (2) (Sch 8 para 25A added by the Criminal Justice and Immigration Act 2008 Sch 4 para 109). Where the court so remands the offender it must fix the time and place at which the hearing is to be resumed and that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand,

and where the court so adjourns the hearing but does not remand the offender it may fix the time and place at which the hearing is to be resumed but, if it does not do so, it must not resume the hearing unless it is satisfied that the offender and the responsible officer have had adequate notice of the time and place for the resumed hearing: Criminal Justice Act 2003 Sch 8 para 25A(3), (4) (as so added). These powers may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980: Criminal Justice Act 2003 Sch 8 para 25A(5) (as so added). These provisions apply to any hearing in any proceedings under Sch 8 in place of the Magistrates' Courts Act 1980 s 10 (adjournment of trial: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 707, 711) where s 10 would otherwise apply, but do not affect the application of s 10 to hearings of any other description: Criminal Justice Act 2003 Sch 8 para 25A(6) (as so added).

As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

4 The fact that an appeal against sentence had been lodged could not afford a reasonable excuse to a defendant for failing to comply with the requirements of a community order: see *West Midlands Probation Board v Sutton Coldfield Magistrates' Court* [2008] EWHC 15 (Admin), [2008] 3 All ER 1193, sub nom *West Midlands Probation Board v Sadler* [2008] 1 WLR 918.

5 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. An offender who is required by a mental health treatment requirement (see PARA 278), a drug rehabilitation requirement (see PARA 279) or an alcohol treatment requirement (see PARA 281) to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for these purposes as having failed to comply with that requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances: Criminal Justice Act 2003 Sch 8 para 11(1).

6 Criminal Justice Act 2003 Sch 8 para 9(1)(a). In so dealing with an offender the court may extend the duration of particular requirements (subject to any limit imposed by Pt 12 Ch 4 (ss 196-223) (see PARA 270 et seq) but may not extend the period specified under s 177(5) (see PARA 173): Sch 8 para 9(3). Where a magistrates' court so dealing with an offender would not otherwise have the power to amend the community order under Sch 8 para 16 (amendment by reason of change of residence: see PARA 182), Sch 8 para 16 has effect as if the references to the appropriate court were references to the court dealing with the offender: Sch 8 para 9(5A) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 7(1), (4)). Head (1) in the text has effect subject to the provisions mentioned in the Criminal Justice Act 2003 s 177(2), and to s 177(3), (6) (see PARA 171): Sch 8 para 26.

A court may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement under this provision unless the offender expresses his willingness to comply with the requirement as amended: Sch 8 para 11(2).

7 Criminal Justice Act 2003 Sch 8 para 9(1)(b). In so dealing with an offender, the court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the community order, impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in 152(2) (see PARA 19): Sch 8 para 9(4).

Where a community order was made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence committed before 30 November 2009 which is triable only on indictment in the case of an adult, any powers exercisable under head (2) in the text in respect of the offender after he attains the age of 18 are powers to do either or both of the following:

- 156 (1) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made (Sch 8 para 12(a) (Sch 8 para 12 repealed by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 96, Sch 28 Pt 1, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)));
- 157 (2) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months (until the date on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force) or (as from that date) 51 weeks (Sch 8 para 12(b) (amended by SI 2005/643; repealed)).

8 Criminal Justice Act 2003 Sch 8 para 9(1)(c)(i).

9 Criminal Justice Act 2003 Sch 8 para 9(1)(c)(ii).

10 As to the age of an offender for sentencing purposes see PARA 27.

11 Criminal Justice Act 2003 Sch 8 para 9(1)(c)(iii).

12 Criminal Justice Act 2003 Sch 8 para 9(1)(c)(iv).

13 Ie until the date on which the Criminal Justice and Court Services Act 2000 s 61 (abolition of sentences of detention in a young offender institution, custody for life etc: PARA 11) comes into force. At the date at which this volume states the law no day had been appointed for the commencement of s 61.

14 For these purposes a sentence of detention in a young offender institution may be passed on a person aged at least 18 but under 21: Criminal Justice Act 2003 Sch 8 para 9(1)(c) (amended by SI 2005/643). As to a sentence of detention in a young offender institution see PARA 85. As to the determination of a person's age for these purposes see PARA 27 note 13.

15 Ie as from the date on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force.

16 Criminal Justice Act 2003 Sch 8 para 9(1)(c) (amended by SI 2005/643).

17 Criminal Justice Act 2003 Sch 8 para 9(2). The court dealing with breach of a community sentence should have as its primary objective ensuring that the requirements of the sentence are finished. A court that imposes a custodial sentence for breach without giving adequate consideration to alternatives is in danger of imposing a sentence incommensurate with the seriousness of the original offence and is solely a punishment for breach. Before increasing the onerousness of requirements, the court should take account of the offender's ability to comply and should avoid precipitating further breach by overloading the offender with too many or conflicting requirements. There may be cases where the court will need to consider re-sentencing to a differently constructed community sentence in order to secure compliance with the purposes of the original sentence, perhaps where there has already been partial compliance or where events since the sentence was imposed have shown that a different course of action is likely to be effective: Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) paras 1.1.45-1.1.47.

18 Criminal Justice Act 2003 Sch 8 para 9(5).

19 Ie apart from the Criminal Justice Act 2003 Sch 8 para 9(6).

20 Criminal Justice Act 2003 Sch 8 para 9(6). A magistrates' court which deals with an offender's case under Sch 8 para 9(6) must send to the Crown Court: (1) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of the community order in the respect specified in the certificate (Sch 8 para 9(7)(a)); and (2) such other particulars of the case as may be desirable; and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court (Sch 8 para 9(7)(b)).

Where a community order has been made on appeal, it is to be taken for the purposes of Sch 8 to have been made by the Crown Court: Sch 8 para 4.

21 Criminal Justice Act 2003 Sch 8 para 9(8).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(ii) Breach of Requirement of Community Order/179. Powers of Crown Court.

179. Powers of Crown Court.

Where¹ an offender² appears or is brought before the Crown Court and it is proved to the satisfaction of that court that he has failed without reasonable excuse³ to comply with any of the requirements of the community order⁴, the Crown Court must deal with him in respect of the failure in any one of the following ways:

- 610 (1) by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could impose if it were then making the order⁵;
- 611 (2) by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁶;
- 612 (3) where:
 - 13 43. (a) the offence in respect of which the order was made was not an offence punishable by imprisonment⁷;
 - 44. (b) the offender is aged 18 or over⁸; and
 - 45. (c) the offender has wilfully and persistently failed to comply with the requirements of the order⁹,
 - 14 613 by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, until a day to be appointed¹⁰, a sentence of detention in a young offender institution¹¹ for a term not exceeding six months (or, as from a day to be appointed¹², 51 weeks)¹³.

In so dealing with an offender, the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order¹⁴.

Where the Crown Court deals with an offender under head (1) or head (2) above, it must revoke the community order if it is still in force¹⁵.

¹ ie under the Criminal Justice Act 2003 Sch 8 para 8 (see PARA 177) or by virtue of Sch 8 para 9(6) (see PARA 178).

² As to the meaning of 'offender' see PARA 176 note 2.

³ Cf, in connection with orders enforceable by magistrates' courts, *West Midlands Probation Board v Sutton Coldfield Magistrates' Court* [2008] EWHC 15 (Admin), [2008] 3 All ER 1193, sub nom *West Midlands Probation Board v Sadler* [2008] 1 WLR 918 (the fact that an appeal against sentence had been lodged could not afford a reasonable excuse to a defendant for failing to comply with the requirements of a community order).

⁴ For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

An offender who is required by a mental health treatment requirement (see PARA 278), a drug rehabilitation requirement (see PARA 279) or an alcohol treatment requirement (see PARA 281) to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for these purposes as having failed to comply with that requirement on the ground only that he had refused to undergo

any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances: Criminal Justice Act 2003 Sch 8 para 11(1). Any question whether the offender has failed to comply with the requirements of the community order is to be determined by the court and not by the verdict of a jury: Sch 8 para 10(6).

5 Criminal Justice Act 2003 Sch 8 para 10(1)(a). In so dealing with an offender the court may extend the duration of particular requirements (subject to any limit imposed by Pt 12 Ch 4 (ss 196-223) (see PARA 270 et seq)) but may not extend the period specified under s 177(5) (see PARA 173): Sch 8 para 10(3). Head (1) in the text has effect subject to the provisions mentioned in s 177(2), and to s 177(3), (6) (see PARA 171): Sch 8 para 26. A court may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement under this provision unless the offender expresses his willingness to comply with the requirement as amended: Sch 8 para 11(2).

6 Criminal Justice Act 2003 Sch 8 para 10(1)(b). In so dealing with an offender, the Crown Court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the community order, impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in s 152(2) (see PARA 19): Sch 8 para 10(4).

7 Criminal Justice Act 2003 Sch 8 para 10(1)(c)(i).

8 Criminal Justice Act 2003 Sch 8 para 10(1)(c)(ii).

9 Criminal Justice Act 2003 Sch 8 para 10(1)(c)(iii).

10 I.e. until the date on which the Criminal Justice and Court Services Act 2000 s 61 (abolition of sentences of detention in a young offender institution, custody for life etc: PARA 11) comes into force. At the date at which this volume states the law no day had been appointed for the commencement of s 61.

11 For these purposes a sentence of detention in a young offender institution may be passed on a person aged at least 18 but under 21: Criminal Justice Act 2003 Sch 8 para 10(1)(c) (amended by SI 2005/643). As to a sentence of detention in a young offender institution see PARA 85. As to the determination of a person's age for these purposes see PARA 27 note 13.

12 I.e. as from the date on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force.

13 Criminal Justice Act 2003 Sch 8 para 10(1)(c) (amended by SI 2005/643).

14 Criminal Justice Act 2003 Sch 8 para 10(2).

15 Criminal Justice Act 2003 Sch 8 para 10(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/180. Revocation of order by magistrates' court.

(iii) Revocation and Amendment of Community Order

180. Revocation of order by magistrates' court.

Where a community order¹ (other than one made by the Crown Court which does not include a direction that any failure to comply with its requirements is to be dealt with by a magistrates' court) is in force and, on the application of the offender² or the responsible officer³, it appears to the appropriate magistrates' court⁴ that, having regard to circumstances which have arisen subsequent to the order, it would be in the interests of justice for the order to be revoked⁵ or for the offender to be dealt with in some other way for the offence in respect of which the order was made⁶, the appropriate magistrates' court may:

614 (1) revoke the order⁷; or

615 (2) both revoke the order⁸ and deal with the offender, for that offence⁹, in any way in which it could deal with him if he had just been convicted by the court of the offence¹⁰.

The circumstances in which a community order may be so revoked include the offender's making good progress or his responding satisfactorily to supervision or treatment¹¹.

Where a magistrates' court proposes to exercise its powers under these provisions otherwise than on the application of the offender it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest¹².

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 As to the meaning of 'offender' see PARA 176 note 2. No application may be made under the Criminal Justice Act 2003 Sch 8 para 13 (see the text and notes 3-12) while an appeal against the community order is pending: Sch 8 para 24(1).

3 As to the meaning of 'responsible officer' see PARA 104 note 7.

4 In the Criminal Justice Act 2003 Sch 8 para 13 'appropriate magistrates' court' means:

158 (1) in the case of an order imposing a drug rehabilitation requirement (see PARA 279) which is subject to review, the magistrates' court responsible for the order (Sch 8 para 13(7)(a)); and

159 (2) in the case of any other community order, a magistrates' court acting for the local justice area concerned (Sch 8 para 13(7)(b) (amended by SI 2005/886)).

As to references to a drug rehabilitation requirement of a community order being subject to review and to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review see PARA 177. As to the meaning of 'local justice area concerned' see PARA 177 note 10. As to the adjournment of hearings by magistrates' courts and the remanding of offenders see PARA 178 note 3.

5 Criminal Justice Act 2003 Sch 8 para 13(1)(a).

6 Criminal Justice Act 2003 Sch 8 para 13(1)(b).

7 Criminal Justice Act 2003 Sch 8 para 13(2)(a).

8 Criminal Justice Act 2003 Sch 8 para 13(2)(b)(i). In dealing with an offender under Sch 8 para 13(2)(b) a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order: Sch 8 para 13(4). A person sentenced under Sch 8 para 13(2)(b) for an offence may appeal to the Crown Court against the sentence: Sch 8 para 13(5).

9 le the offence in respect of which the order was made.

10 Criminal Justice Act 2003 Sch 8 para 13(2)(b)(ii). See note 8. Where a community order was made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence committed before 30 November 2009 which is triable only on indictment in the case of an adult, any powers exercisable under Sch 8 para 13(2)(b)(ii) in respect of the offender after he attains the age of 18 are powers to do either or both of the following:

160 (1) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made (Sch 8 paras 12(a), 15 (Sch 8 paras 12, 15 repealed by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 96, Sch 28 Pt 1, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)));

161 (2) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months (until the date on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force) or (as from that date) 51 weeks (Sch 8 para 12(b) (amended by SI 2005/643; repealed)).

11 Criminal Justice Act 2003 Sch 8 para 13(3).

12 Criminal Justice Act 2003 Sch 8 para 13(6).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/181. Revocation of order by Crown Court.

181. Revocation of order by Crown Court.

Where there is in force a community order¹ made by the Crown Court² which does not include a direction that any failure to comply with its requirements is to be dealt with by a magistrates' court³, and the offender⁴ or the responsible officer⁵ applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made⁶, and it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen subsequent to the order, the Crown Court may:

616 (1) revoke the order⁷; or

617 (2) both revoke the order⁸ and deal with the offender, for that offence⁹, in any way in which it could deal with him if he had just been convicted by the court of the offence¹⁰.

The circumstances in which a community order may be so revoked include the offender's making good progress or his responding satisfactorily to supervision or treatment (as the case requires)¹¹.

Where the Crown Court proposes to exercise its powers under these provisions otherwise than on the application of the offender it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest¹².

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 Where a community order has been made on appeal, it is to be taken for the purposes of Sch 8 to have been made by the Crown Court: Criminal Justice Act 2003 Sch 8 para 4.

3 Criminal Justice Act 2003 Sch 8 para 14(1)(a).

4 As to the meaning of 'offender' see PARA 176 note 2.

5 As to the meaning of 'responsible officer' see PARA 104 note 7.

6 Criminal Justice Act 2003 Sch 8 para 14(1)(b).

7 Criminal Justice Act 2003 Sch 8 para 14(2)(a).

8 Criminal Justice Act 2003 Sch 8 para 14(2)(b)(i). In dealing with an offender under Sch 8 para 14(2)(b) a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order: Sch 8 para 14(4).

9 Ie the offence in respect of which the order was made.

10 Criminal Justice Act 2003 Sch 8 para 14(2)(b)(ii). See note 8. Where a community order was made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence committed before 30 November 2009 which is triable only on indictment in the case of an adult, any powers exercisable under Sch 8 para 14(2)(b)(ii) in respect of the offender after he attains the age of 18 are powers to do either or both of the following:

- 162 (1) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made (Sch 8 paras 12(a), 15 (Sch 8 paras 12, 15 repealed by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 96, Sch 28 Pt 1, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)));
- 163 (2) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months (until the date on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force) or (as from that date) 51 weeks (Sch 8 para 12(b) (amended by SI 2005/643; repealed)).
- 11 Criminal Justice Act 2003 Sch 8 para 14(3).
- 12 Criminal Justice Act 2003 Sch 8 para 14(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/182. Amendment by reason of change of residence.

182. Amendment by reason of change of residence.

Where, at any time while a community order¹ is in force in respect of an offender², the appropriate court³ is satisfied that the offender proposes to change, or has changed, his residence from the local justice area concerned⁴ to another local justice area, the appropriate court may, and on the application of the responsible officer⁵ must, amend the community order by substituting the other local justice area for the area specified in the order⁶. However, the court may not so amend a community order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area concerned, unless⁷ it either cancels those requirements⁸ or substitutes for those requirements other requirements which can be complied with if the offender ceases to reside in that area⁹. A court may not amend a community order imposing a programme requirement¹⁰ unless it appears to the court that the accredited programme¹¹ specified in the requirement is available in the other local justice area¹².

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 As to the meaning of 'offender' see PARA 176 note 2.

3 For these purposes, 'appropriate court' means:

164 (1) in relation to any community order imposing a drug rehabilitation requirement (see PARA 279) which is subject to review, the court responsible for the order (Criminal Justice Act 2003 Sch 8 paras 16(5)(a), 17(6), 18(4), 20(2));

165 (2) in relation to any community order which was made by the Crown Court and does not include any direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the Crown Court (Sch 8 para 16(5)(b)); and

166 (3) in relation to any other community order, a magistrates' court acting in the local justice area concerned (Sch 8 para 16(5)(c) (Sch 8 paras 16(1)-(4), (5)(c), 25(2) amended by SI 2005/886)).

As to references to a drug rehabilitation requirement of a community order being subject to review and to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review see PARA 177 notes 7, 8. Where a community order has been made on appeal, it is to be taken for the purposes of Sch 8 to have been made by the Crown Court: Criminal Justice Act 2003 Sch 8 para 4.

4 As to the meaning of 'local justice area concerned' see PARA 177 note 10.

5 As to the meaning of 'responsible officer' see PARA 104 note 7.

6 Criminal Justice Act 2003 Sch 8 para 16(1), (2) (as amended: see note 3). No order may be made under Sch 8 para 16 while an appeal against the community order is pending: Sch 8 para 24(1). Where a court proposes to exercise its powers of amendment under Sch 8 paras 16-21, otherwise than on the application of the offender, the court must summon him to appear before it (Sch 8 para 25(1)(a)); and, if he does not appear in answer to the summons, it may issue a warrant for his arrest (Sch 8 para 25(1)(b)). However, this does not apply to an order cancelling a requirement of a community order or reducing the period of a requirement, or substituting a new local justice area or a new place for the one specified in the order: Sch 8 para 25(2) (as so amended).

7 Ie in accordance with the Criminal Justice Act 2003 Sch 8 para 17 (see PARA 183).

- 8 Criminal Justice Act 2003 Sch 8 para 16(3)(a) (as amended: see note 3).
- 9 Criminal Justice Act 2003 Sch 8 para 16(3)(b) (as amended: see note 3).
- 10 See PARA 273.
- 11 See PARA 273 note 2.
- 12 Criminal Justice Act 2003 Sch 8 para 16(4) (as amended: see note 3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/183. Amendment of requirements of community order.

183. Amendment of requirements of community order.

The appropriate court¹ may, on the application² of the offender or the responsible officer, by order amend a community order:

- 618 (1) by cancelling any of the requirements of the order³; or
- 619 (2) by replacing any of those requirements with a requirement of the same kind, which the court could include if it were then making the order⁴.

The court may not so amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended⁵. If the offender fails to express his willingness to comply with a mental health treatment requirement, drug rehabilitation requirement or alcohol treatment requirement as proposed to be so amended by the court, the court may:

- 620 (a) revoke the community order⁶; and
- 621 (b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁷.

1 As to the meaning of 'appropriate court' see PARA 182 note 3.

2 No application may be made under the Criminal Justice Act 2003 Sch 8 para 17 while an appeal against the community order is pending: Sch 8 para 24(1). However, this does not apply to an application under Sch 8 para 17 which relates to a mental health treatment requirement (see PARA 278), a drug rehabilitation requirement (see PARA 279) or an alcohol treatment requirement (see PARA 281) (Sch 8 para 24(2)(a)) and which is made by the responsible officer with the consent of the offender (Sch 8 para 24(2)(b)).

For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6. As to the meaning of 'responsible officer' see PARA 104 note 7. As to the meaning of 'offender' see PARA 176 note 2.

3 Criminal Justice Act 2003 Sch 8 para 17(1)(a). See also Sch 8 para 25; and PARA 182 note 6.

4 Criminal Justice Act 2003 Sch 8 para 17(1)(b). See note 3. Head (2) in the text has effect subject to the provisions mentioned in s 177(2), and to s 177(3), (6) (see PARA 171): Sch 8 para 26.

5 Criminal Justice Act 2003 Sch 8 para 17(2).

6 Criminal Justice Act 2003 Sch 8 para 17(3)(a).

7 Criminal Justice Act 2003 Sch 8 para 17(3)(b). In dealing with the offender under Sch 8 para 17(3)(b) the court must take into account the extent to which the offender has complied with the requirements of the order (Sch 8 para 17(4)(a)) and may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in s 152(2) (see PARA 19) (Sch 8 para 17(4)(b)).

Where a community order was made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence committed before 30 November 2009 which is triable only on indictment in the case of an adult, any powers exercisable under Sch 8 para 17(3)(b) in respect of the offender after he attains the age of 18 are powers to do either or both of the following:

- 167 (1) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made (Sch 8 paras 12(a), 17(5) (Sch 8 paras 12, 17(5) repealed by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 96, Sch 28 Pt 1, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)));
- 168 (2) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months (until the date on which the repeal of the Powers of Criminal Courts (Sentencing) Act 2000 s 78 (general limits on magistrates' powers: see PARA 6) by the Criminal Justice Act 2003 Sch 37 Pt 7 comes into force) or (as from that date) 51 weeks (Sch 8 para 12(b) (amended by SI 2005/643; repealed)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/184. Amendment of treatment requirements of community order on report of practitioner.

184. Amendment of treatment requirements of community order on report of practitioner.

Where the medical practitioner or other person by whom or under whose direction an offender¹ is, in pursuance of a mental health treatment requirement², a drug rehabilitation requirement³ or an alcohol treatment requirement⁴, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol:

622 (1) is of the opinion:

15

46. (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order⁵;

47. (b) that the offender needs different treatment⁶;

48. (c) that the offender is not susceptible to treatment⁷; or

49. (d) that the offender does not require further treatment⁸; or

16

623 (2) is for any reason unwilling to continue to treat or direct the treatment of the offender⁹,

he must make a report in writing to that effect to the responsible officer¹⁰ and that officer must apply¹¹ to the appropriate court¹² for the variation or cancellation of the requirement¹³.

1 As to the meaning of 'offender' see PARA 176 note 2.

2 Criminal Justice Act 2003 Sch 8 para 18(2)(a). As to a mental health treatment requirement see PARA 278. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 Criminal Justice Act 2003 Sch 8 para 18(2)(b). As to a drug rehabilitation requirement see PARA 279.

4 Criminal Justice Act 2003 Sch 8 para 18(2)(c). As to an alcohol treatment requirement see PARA 281.

5 Criminal Justice Act 2003 Sch 8 para 18(1)(a), (3)(a).

6 Criminal Justice Act 2003 Sch 8 para 18(3)(b).

7 Criminal Justice Act 2003 Sch 8 para 18(3)(c).

8 Criminal Justice Act 2003 Sch 8 para 18(3)(d).

9 Criminal Justice Act 2003 Sch 8 para 18(1)(b).

10 As to the meaning of 'responsible officer' see PARA 104 note 7.

11 Ie under the Criminal Justice Act 2003 Sch 8 para 17 (see PARA 183).

12 As to the meaning of 'appropriate court' see PARA 182 note 3.

13 Criminal Justice Act 2003 Sch 8 para 18(1). See also Sch 8 para 25; and PARA 182 note 6.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/185. Amendment in relation to review of drug rehabilitation requirement.

185. Amendment in relation to review of drug rehabilitation requirement.

Where the responsible officer¹ is of the opinion that a community order² imposing a drug rehabilitation requirement³ which is subject to review⁴ should be so amended as to provide for each subsequent periodic review⁵ to be made without a hearing instead of at a review hearing, or vice versa, he must apply⁶ to the court responsible for the order⁷ for the variation of the order⁸.

1 As to the meaning of 'responsible officer' see PARA 104 note 7.

2 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 As to a drug rehabilitation requirement see PARA 279.

4 As to references to a drug rehabilitation requirement of a community order being subject to review see PARA 177 note 7.

5 Ie each periodic review required by the Criminal Justice Act 2003 s 211 (see PARA 280).

6 Ie under Criminal Justice Act 2003 Sch 8 para 17 (see PARA 183).

7 As to references to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review see PARA 177 note 8.

8 Criminal Justice Act 2003 Sch 8 para 19. See also Sch 8 para 25; and PARA 182 note 6.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/186. Extension of unpaid work requirement.

186. Extension of unpaid work requirement.

Where:

- 624 (1) a community order¹ imposing an unpaid work requirement² is in force in respect of any offender³; and
- 625 (2) on the application⁴ of the offender⁵ or the responsible officer⁶, it appears to the appropriate court⁷ that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made⁸,

the court may, in relation to the order, extend the specified⁹ period of 12 months¹⁰.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 See PARA 271.

3 Criminal Justice Act 2003 Sch 8 para 20(1)(a).

4 No application may be made under the Criminal Justice Act 2003 Sch 8 para 20 while an appeal against the community order is pending: Sch 8 para 24(1).

5 As to the meaning of 'offender' see PARA 176 note 2.

6 As to the meaning of 'responsible officer' see PARA 104 note 7.

7 As to the meaning of 'appropriate court' see PARA 182 note 3.

8 Criminal Justice Act 2003 Sch 8 para 20(1)(b).

9 Ie specified by the Criminal Justice Act 2003 s 200(2) (see PARA 271).

10 Criminal Justice Act 2003 Sch 8 para 20(1). See also Sch 8 para 25; and PARA 182 note 6.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iii) Revocation and Amendment of Community Order/187. Supplementary.

187. Supplementary.

On the making¹ of an order revoking or amending a community order², the proper officer³ of the court must:

- 626 (1) provide copies of the revoking or amending order to the offender⁴ and the responsible officer⁵;
- 627 (2) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to:
 - 17 50. (a) the local probation board acting for that area (or, as the case may be, a provider of probation services operating in that area)⁶; and
 - 51. (b) the magistrates' court acting in that area⁷; and
- 18 628 (3) in the case of an amending order which imposes or amends a specified requirement⁸, provide a copy of so much of the amending order as relates to that requirement to the person specified⁹ in relation to that requirement¹⁰; and
- 629 (4) where the court acts in a local justice area other than the one specified in the order prior to the revocation or amendment, provide a copy of the revoking or amending order to a magistrates' court acting in the area so specified¹¹.

1 Ie under the Criminal Justice Act 2003 Sch 8.

2 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 Ie in relation to a magistrates' court, the designated officer for the court (Criminal Justice Act 2003 Sch 8 para 27(3)(a) (s 27(1)(b), (2), (3)(a) amended by SI 2005/886)); and in relation to the Crown Court, the appropriate officer (Criminal Justice act 2003 Sch 8 para 27(3)(b)).

4 As to the meaning of 'offender' see PARA 176 note 2.

5 Criminal Justice Act 2003 Sch 8 para 27(1)(a). As to the meaning of 'responsible officer' see PARA 104 note 7.

6 Criminal Justice Act 2003 Sch 8 para 27(1)(b)(i) (s 27(1)(b) as amended (see note 3); amended by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq.

7 Criminal Justice Act 2003 Sch 8 para 27(1)(b)(ii) (as amended: see note 3). Where the proper officer of the court so provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Sch 8 para 27(2) (as so amended).

8 Ie specified in the first column of the Criminal Justice Act 2003 Sch 14: see PARAS 276-279.

9 Ie specified in the second column of the Criminal Justice Act 2003 Sch 14: see PARAS 276-279.

10 Criminal Justice Act 2003 Sch 8 para 27(1)(c).

11 Criminal Justice Act 2003 Sch 8 para 27(1)(d) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 7(1), (5); amended by SI 2005/886).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iv) Subsequent Convictions/188. Powers of magistrates' courts.

(iv) Subsequent Convictions

188. Powers of magistrates' courts.

Where an offender¹ in respect of whom a community order² made by a magistrates' court is in force is convicted of an offence by a magistrates' court³, and it appears to the court that it would be in the interests of justice so to act, having regard to circumstances which have arisen subsequent to the order⁴, the magistrates' court may:

- 630 (1) revoke the order⁵; or
- 631 (2) both revoke the order⁶ and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁷.

Where an offender in respect of whom a community order made by the Crown Court is in force is convicted of an offence by a magistrates' court, the magistrates' court may commit the offender in custody or release him on bail until he can be brought before the Crown Court⁸.

1 As to the meaning of 'offender' see PARA 176 note 2.

2 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 Criminal Justice Act 2003 Sch 8 para 21(1)(a). As to the adjournment of hearings by magistrates' courts and the remanding of offenders see PARA 178 note 3.

4 Criminal Justice Act 2003 Sch 8 para 21(1)(b).

5 Criminal Justice Act 2003 Sch 8 para 21(2)(a). Where a court proposes to exercise its powers of amendment under Sch 8 paras 21-23 (see the text and notes 6-8; and PARA 189), otherwise than on the application of the offender, the court must summon him to appear before it (Sch 8 para 25(1)(a)); and, if he does not appear in answer to the summons, it may issue a warrant for his arrest (Sch 8 para 25(1)(b)). However, this does not apply to an order cancelling a requirement of a community order or reducing the period of a requirement, or substituting a new local justice area or a new place for the one specified in the order: Sch 8 para 25(2) (amended by SI 2005/886).

6 Criminal Justice Act 2003 Sch 8 para 21(2)(b)(i). See note 5. In dealing with an offender under Sch 8 para 21(2)(b), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order: Sch 8 para 21(3).

7 Criminal Justice Act 2003 Sch 8 para 21(2)(b)(ii). See notes 5, 6. A person sentenced under Sch 8 para 21(2)(b) for an offence may appeal to the Crown Court against the sentence: Sch 8 para 21(4).

8 Criminal Justice Act 2003 Sch 8 para 22(1). Where the magistrates' court so deals with an offender's case, it must send to the Crown Court such particulars of the case as may be desirable: Sch 8 para 22(2). See also Sch 8 para 25; and note 5. Where a community order has been made on appeal, it is to be taken for the purposes of Sch 8 to have been made by the Crown Court: Sch 8 para 4.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(iv) Subsequent Convictions/189. Powers of Crown Court.

189. Powers of Crown Court.

Where:

- 632 (1) an offender¹ in respect of whom a community order² is in force is convicted of an offence by the Crown Court³ or is brought or appears before the Crown Court⁴ having been committed by the magistrates' court to the Crown Court for sentence⁵; and
- 633 (2) it appears to the Crown Court that it would be in the interests of justice so to act, having regard to circumstances which have arisen since the community order was made⁶,

the Crown Court may:

- 634 (a) revoke the order⁷; or
- 635 (b) both revoke the order⁸ and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁹.

1 As to the meaning of 'offender' see PARA 176 note 2.

2 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARAS 171, 176 note 3. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

3 Criminal Justice Act 2003 Sch 8 para 23(1)(a)(i).

4 Ie by virtue of the Criminal Justice Act 2003 Sch 8 para 22 (see PARA 188).

5 Criminal Justice Act 2003 Sch 8 para 23(1)(a)(ii).

6 Criminal Justice Act 2003 Sch 8 para 23(1)(b).

7 Criminal Justice Act 2003 Sch 8 para 23(2)(a). See PARA 188 note 5.

8 Criminal Justice Act 2003 Sch 8 para 23(2)(b)(i). In dealing with an offender under Sch 8 para 23(2)(b), the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order: Sch 8 para 23(3).

9 Criminal Justice Act 2003 Sch 8 para 23(2)(b)(ii). See note 8. Note that where the Crown Court imposes a custodial sentence in respect of an offence for which the magistrates' court has made a community order the Crown Court must observe all limitations on the powers of magistrates' courts including the restrictions on consecutive sentences: see the Magistrates' Courts Act 1980 s 133; and PARA 35.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(v) Orders Operating in Scotland and Northern Ireland/190. Supervision arrangements.

(v) Orders Operating in Scotland and Northern Ireland

190. Supervision arrangements.

Where the court considering the making of a community order¹ is satisfied that the offender resides in Scotland or Northern Ireland, or will reside there when the order comes into force, it may not so make an order in respect of the offender unless it appears to the court that suitable arrangements for the offender's supervision can be made by the council in Scotland² in whose area he resides, or will be residing when the order comes into force, or by the Probation Board for Northern Ireland, as the case may be³.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARA 171. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 Ie the council constituted under the Local Government etc (Scotland) Act 1994 s 2: Criminal Justice Act 2003 Sch 9 para 1(1)(b).

3 Criminal Justice Act 2003 Sch 9 paras 1(1)(b), 3(1)(b). A community order made in accordance with Sch 9 para 1 or Sch 9 para 3 must:

- 169 (1) specify the locality in Scotland, or the petty sessions district in Northern Ireland, as the case may be, in which the offender resides or will be residing when the order or amendment comes into force (Sch 9 paras 1(6)(a), 3(5));
- 170 (2) specify as the corresponding order for these purposes an order that may be made by a court in Scotland or, as the case may be, Northern Ireland (Sch 9 paras 1(6)(b), 3(6)); and
- 171 (3) in relation to Scotland, specify as the appropriate court (ie for the purposes of the Criminal Procedure (Scotland) Act 1995 s 228(4)) a court of summary jurisdiction (which, in the case of an offender convicted on indictment, must be the sheriff court) having jurisdiction in the specified locality (Criminal Justice Act 2003 Sch 9 para 1(6)(c)).

Section 216 (local justice area to be specified: see PARAS 98, 100, 112, 171) does not apply to an order so made or amended: Sch 9 paras 1(6), 3(5) (amended by SI 2005/886).

Where a community order is made or amended in accordance with the Criminal Justice Act 2003 Sch 9 para 1 or Sch 9 para 3, the court which makes or amends the order must provide the home court with a copy of the order as made or amended, together with such other documents and information relating to the case as it considers likely to be of assistance to that court: Sch 9 para 6. Section 219(1)(b)-(d) (provision of copies of relevant orders: see PARA 98) do not apply in these circumstances: Sch 9 para 6. For these purposes 'home court' means:

- 172 (1) if the offender resides in Scotland, or will be residing there at the relevant time, the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside (Sch 9 para 5); and
- 173 (2) if he resides in Northern Ireland, or will be residing there at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside (Sch 9 para 5).

'Relevant time' means the time when the order or the amendment to it comes into force: Sch 9 para 5.

Before making or amending a community order in these circumstances the court must explain to the offender in ordinary language:

- 174 (a) the requirements of the legislation relating to corresponding orders which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time (Sch 9 para 9(a));
- 175 (b) the powers of the home court under that legislation (as modified by Sch 9 paras 5-15) (Sch 9 para 9(b)); and
- 176 (c) its own powers under Sch 9 paras 5-15 (Sch 9 para 9(c)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/7. COMMUNITY SENTENCES/(2) COMMUNITY ORDERS/(v) Orders Operating in Scotland and Northern Ireland/191. Compliance with requirements.

191. Compliance with requirements.

Where the court considering the making of a community order¹ imposing:

- 636 (1) an unpaid work requirement²;
- 637 (2) an activity requirement³;
- 638 (3) a programme requirement⁴;
- 639 (4) a mental health treatment requirement⁵;
- 640 (5) a drug rehabilitation requirement⁶;
- 641 (6) an alcohol treatment requirement⁷;
- 642 (7) (in Northern Ireland) an attendance centre requirement⁸; or
- 643 (8) an electronic monitoring requirement⁹,

is satisfied that the offender resides in Scotland or Northern Ireland, or will reside there when the order comes into force, the court may not make an order in respect of the offender unless it appears to the court that arrangements exist for persons to comply with such a requirement in the locality in Scotland or petty sessions district in Northern Ireland, as the case may be, in which the offender resides, or will be residing when the order comes into force, and that provision can be made for him to comply with the requirement under those arrangements¹⁰.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARA 171. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 Criminal Justice Act 2003 Sch 9 paras 1(2)(a), 3(2)(a). As to unpaid work requirements see s 199; and PARA 271.

3 Criminal Justice Act 2003 Sch 9 paras 1(2)(b), 3(2)(b). As to activity requirements see s 201; and PARA 272.

4 Criminal Justice Act 2003 Sch 9 paras 1(2)(c), 3(2)(c). As to programme requirements see s 202; and PARA 273.

5 Criminal Justice Act 2003 Sch 9 paras 1(2)(d), 3(2)(d). As to mental health treatment requirements see s 207; and PARA 278.

6 Criminal Justice Act 2003 Sch 9 paras 1(2)(e), 3(2)(e). As to drug rehabilitation requirements see s 209; and PARA 279.

7 Criminal Justice Act 2003 Sch 9 paras 1(2)(f), 3(2)(f). As to alcohol treatment requirements see s 212; and PARA 281.

8 Criminal Justice Act 2003 Sch 9 para 3(2)(g). As to attendance centre requirements in Northern Ireland see s 214; and PARA 283. The court may not by virtue of these provisions require an attendance centre requirement to be complied with in Scotland: Sch 9 para 1(5).

9 Criminal Justice Act 2003 Sch 9 paras 1(2)(g), 3(2)(h). As to electronic monitoring requirements see s 215; and PARA 284.

10 Criminal Justice Act 2003 Sch 9 paras 1(1)(a), 3(1)(a). See further PARA 190 note 3.

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192. Change of residence.

Where:

- 644 (1) the appropriate court in connection with the provisions concerned with the amendment of a community order¹ by reason of change of residence² is satisfied that an offender in respect of whom a community order is in force proposes to reside or is residing in Scotland or Northern Ireland, as the case may be³; and
- 645 (2) it appears to the court that the conditions which determine whether a transfer order may be made⁴ are satisfied⁵,

the power of the court to amend the order⁶ includes power to amend it by requiring it to be complied with in Scotland or Northern Ireland, as the case may be, and the offender to be supervised in accordance with the appropriate arrangements⁷.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARA 171. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 As to these powers see Criminal Justice Act 2003 Sch 8 para 16; and PARA 182.

3 Criminal Justice Act 2003 Sch 9 paras 1(3)(a), 3(3)(a).

4 Ie the conditions set out in the Criminal Justice Act 2003 Sch 9 paras 1(1), 3(1) (see PARAS 190, 191).

5 Criminal Justice Act 2003 Sch 9 paras 1(3)(b), 3(3)(b).

6 Ie under the Criminal Justice Act 2003 Sch 8 (see PARA 176 et seq).

7 Criminal Justice Act 2003 Sch 9 paras 1(3), 3(3). For the appropriate arrangements see Sch 9 paras 1(1)(b), 3(1)(b); and PARA 190. For these purposes, any reference in Sch 9 paras 1(1), 3(1) (see PARAS 190, 191) to the time when the order comes into force is treated as a reference to the time when the amendment comes into force: Sch 9 paras 1(4), 3(4). The court may not by virtue of these provisions require an attendance centre requirement to be complied with in Scotland: Sch 9 para 1(5). See further PARA 190 note 3.

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193. Status of transferred order.

Where a community order¹ is made or amended² so as to take effect in Scotland or Northern Ireland:

- 646 (1) the order is to be treated as if it were a corresponding order³ made in the part of the United Kingdom⁴ in which the offender resides, or will be residing at the relevant time⁵; and
- 647 (2) the legislation relating to such orders which has effect in that part of the United Kingdom applies accordingly⁶.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARA 171. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 Ie in accordance with the Criminal Justice Act 2003 Sch 9 para 1 or Sch 9 para 3 (see PARAS 190, 191). These provisions are subject to Sch 9 paras 9-15 (see PARAS 190, 194).

3 'Corresponding order' means the order specified under the Criminal Justice Act 2003 Sch 9 para 1(6)(b) or Sch 9 para 3(6) (see PARAS 190 note 3); Sch 9 para 5.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 Criminal Justice Act 2003 Sch 9 para 8(a).

6 Criminal Justice Act 2003 Sch 9 para 8(b). See further PARA 194.

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194. Powers of home courts.

Where a community order¹ is made or amended² so as to take effect in Scotland or Northern Ireland the home court³ may exercise in relation to the order any power which it could exercise in relation to the corresponding order⁴ made by a court in the part of the United Kingdom⁵ in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part, except the following:

- 648 (1) any power to discharge or revoke the order (other than a power to revoke the order where the offender has been convicted of a further offence and the court has imposed a custodial sentence)⁶;
- 649 (2) any power to deal with the offender for the offence in respect of which the order was made⁷;
- 650 (3) in the case of a community order imposing an unpaid work requirement⁸, any power to vary the order by substituting for the number of hours of work specified in it any greater number than the court which made the order could have specified⁹; and
- 651 (4) in the case of a community order imposing a curfew requirement¹⁰, any power to vary the order by substituting for the period specified in it any longer period than the court which made the order could have specified¹¹.

If at any time while legislation relating to corresponding orders which has effect in Scotland or Northern Ireland applies to a community order made in England and Wales:

- 652 (a) it appears to the home court on information from the local authority officer concerned¹², if that court is in Scotland, or upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order, if that court is in Northern Ireland, that the offender has failed to comply with any of the requirements of the order¹³; or
- 653 (b) it appears to the home court on the application of the offender or of the local authority officer concerned, if that court is in Scotland, or on the application of the offender or of the probation officer concerned¹⁴, if that court is in Northern Ireland, that it would be in the interests of justice for a power of revocation¹⁵ with or without re-sentencing to be exercised¹⁶,

the home court may require the offender to appear before the court which made the order or the court which last amended the order in England and Wales¹⁷.

1 For the power to make community orders see PARAS 168, 170; as to the age limits for community orders see PARA 169; as to the requirements see PARA 171. As to the delayed commencement of the provisions of the Criminal Justice Act 2003 relating to community orders (ie ss 177, 179, 180, Schs 8, 9) in so far as they apply where a person aged 16 or 17 is convicted of an offence see PARA 163 note 6.

2 In accordance with the Criminal Justice Act 2003 Sch 9 para 1 or Sch 9 para 3 (see PARAS 190, 191). These provisions are subject to Sch 9 paras 9-15 (see text and notes 3-17; and PARA 190).

3 As to the meaning of 'home court' see PARA 190 note 3.

- 4 As to the meaning of 'corresponding order' see PARA 193 note 3.
- 5 As to the meaning of 'United Kingdom' see PARA 9 note 2.
- 6 Criminal Justice Act 2003 Sch 9 para 10(a).
- 7 Criminal Justice Act 2003 Sch 9 para 10(b).
- 8 As to unpaid work requirements see the Criminal Justice Act 2003 s 199; and PARA 271.
- 9 Criminal Justice Act 2003 Sch 9 para 10(c).
- 10 As to curfew requirements see the Criminal Justice Act 2003 s 204; and PARA 275.
- 11 Criminal Justice Act 2003 Sch 9 para 10(d).
- 12 'Local authority officer concerned', in relation to an offender, means the officer of a council constituted under the Local Government etc (Scotland) Act 1994 s 2 responsible for his supervision or, as the case may be, discharging in relation to him the functions in respect of community service orders assigned by the Criminal Procedure (Scotland) Act 1995 ss 239-245: Criminal Justice Act 2003 Sch 9 para 5.
- 13 Criminal Justice Act 2003 Sch 9 para 11(a). Where an offender is required by this provision to appear before a court in England and Wales, the home court must send to that court a certificate certifying that the offender has failed to comply with such of the requirements of the order as may be specified in the certificate, together with such other particulars of the case as may be desirable (Sch 9 para 15(a)); and a certificate purporting to be signed by the clerk of the home court is admissible as evidence of the failure before the court which made the order (Sch 9 para 15(b)).
- 14 'Probation officer concerned', in relation to an offender, means the probation officer responsible for his supervision or, as the case may be, discharging in relation to him the functions conferred by the Criminal Justice (Northern Ireland) Order 1996, SI 1996/3160 (NI 24), Pt 2: Criminal Justice Act 2003 Sch 9 para 5.
- 15 Ie a power conferred by the Criminal Justice Act 2003 Sch 8 para 13 or Sch 8 para 14 (see PARA 181).
- 16 Criminal Justice Act 2003 Sch 9 para 11(b).
- 17 Criminal Justice Act 2003 Sch 9 para 11. Where an offender is required by virtue of Sch 9 para 11 to appear before a court in England and Wales that court may issue a warrant for his arrest (Sch 9 para 12(a)) and may exercise any power which it could exercise in respect of the community order if the offender resided in England and Wales (Sch 9 para 12(b)). Any enactment relating to the exercise of such powers has effect accordingly, and with any reference to the responsible officer being read as a reference to the local authority officer or probation officer concerned: Sch 9 para 12. Schedule 9 para 12(b) does not enable the court to amend the community order unless: (1) where the offender resides in Scotland, it appears to the court that the conditions in Sch 9 para 1(1)(a), (b) (see PARAS 190, 191) are satisfied in relation to any requirement to be imposed (Sch 9 para 13(a)); or (2) where the offender resides in Northern Ireland, it appears to the court that the conditions in Sch 9 para 3(1)(a), (b) (see PARAS 190, 191) are satisfied in relation to any requirement to be imposed (Sch 9 para 13(b)). Schedule 9 paras 1-13 have effect in relation to the amendment of a community order by virtue of Sch 9 para 12(b) as they have effect in relation to the amendment of such an order by virtue of Sch 9 para 1(3) or Sch 9 para 3(3) (see PARAS 190, 191): Sch 9 para 14.

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(vi) Orders for Offences Committed Before 4 April 2005

A. COMMUNITY REHABILITATION ORDERS, COMMUNITY PUNISHMENT ORDERS AND COMMUNITY PUNISHMENT AND REHABILITATION ORDERS

195. Community rehabilitation orders.

Where a person aged 16 or over¹ is convicted of an offence committed prior to 4 April 2005², and the court by or before which he is convicted is of the opinion that his supervision is desirable in the interests of securing his rehabilitation³ or protecting the public from harm from him or preventing the commission by him of further offences⁴, the court may⁵ make a community rehabilitation order, that is, an order requiring him to be under supervision for a period specified in the order of not less than six months nor more than three years⁶. If the offender is aged 18 or over at the time when the order is made he must⁷ be required to be under the supervision of an officer of a local probation board⁸ appointed for or assigned to the local justice area specified in the order⁹; if the offender is aged under 18 at that time, he must¹⁰ be required to be under the supervision of an officer of a local probation board appointed for or assigned to the local justice area specified in the order¹¹ or a member of a youth offending team¹² established by a local authority specified in the order¹³.

A community rehabilitation order may require the offender to comply during the whole or any part of the community rehabilitation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of securing the rehabilitation of the offender or protecting the public from harm from him or preventing the commission by him of further offences¹⁴. Without prejudice to the generality of that provision, the additional requirements which may be included in a community rehabilitation order must include requirements as to residence, activities, attendance at community rehabilitation centres, treatment for mental conditions or for drug or alcohol dependency, and curfew, as well as special requirements for sexual offenders¹⁵. It may also be compulsory¹⁶, but may be discretionary¹⁷, for a drug abstinence requirement¹⁸ to be included¹⁹.

On making a community rehabilitation order the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender²⁰. Provision is also made in connection with the breach of community rehabilitation orders²¹.

1 As to the age of an offender for sentencing purposes see PARA 27.

2 The Powers of Criminal Courts (Sentencing) Act 2000 ss 41, 42, 45 (see the text and notes 3-21) were repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167). In connection with offences committed after 4 April 2005 see PARA 168 et seq.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 41(1)(a) (repealed: see note 2).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 41(1)(b) (repealed: see note 2).

5 le subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (repealed).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 41(1), (2) (ss 41(2)-(4), (5)(a), (6)-(9), (11), 42(1), (2)(a), (3) amended, s 42(2)(b), (2A)-(2F) added, by the Criminal Justice and Court Services Act 2000 ss 43(3)(a), 49(1), Sch 7 paras 1(1), (2), 4(1), (2), 160, 166; Powers of Criminal Courts (Sentencing) Act 2000 s 41 repealed (see note 2)).

Before making a community rehabilitation order the court must explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be included in the order in accordance with s 42 (see PARA 196)), the consequences which may follow under Sch 3 Pt II (as enacted on 4 April 2005) if he fails to comply with any of the requirements of the order, and that the court has power (under Sch 3 Pts III, IV (as enacted on that date)) to review the order on the application either of the offender or of the responsible officer: s 41(7) (as so amended and repealed). Section 41(7) is prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 165, but owing to the repeal referred to in note 2 it is thought that this amendment will not be brought into force. The court by which a community rehabilitation order is made must also, except where it itself acts in the local justice area specified in the order, send to the designated officers for that area a copy of the order and such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Powers of Criminal Courts (Sentencing) Act 2000 s 41(10) (amended by SI 2005/886; repealed (see note 2)).

The Secretary of State may by order direct that the Powers of Criminal Courts (Sentencing) Act 2000 s 41(1) be amended by substituting, for the minimum or maximum period specified therein as originally enacted or as previously amended, such period as may be specified in the order: see s 45 (repealed: see note 2). At the date at which this volume states the law no such order had been made.

7 le subject to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 18 (as enacted on 4 April 2005) (offender's change of area).

8 As to local probation boards and providers of probation services see PARA 733 et seq. In the Powers of Criminal Courts (Sentencing) Act 2000 (as applying for these purposes) 'responsible officer', in relation to an offender who is subject to a community rehabilitation order, means the officer of a local probation board or member of a youth offending team responsible for his supervision: s 41(6) (as amended and repealed (see notes 2, 6); amended by SI 2008/912). An offender in respect of whom a community rehabilitation order is made must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and must notify him of any change of address: Powers of Criminal Courts (Sentencing) Act 2000 s 41(11) (as so amended and repealed).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 41(4) (as amended and repealed (see notes 2, 6); amended by SI 2005/886; SI 2008/912). A community rehabilitation order must specify the local justice area in which the offender resides or will reside: Powers of Criminal Courts (Sentencing) Act 2000 s 41(3) (as so amended and repealed; amended by SI 2005/886). The court by which a community rehabilitation order is made must forthwith give copies of the order to an officer of a local probation board assigned to the court (if the offender is aged 18 or over) or an officer of a local probation board or member of a youth offending team so assigned (if the offender is aged under 18) and he must give a copy to the offender, to the responsible officer and to the person in charge of any institution in which the offender is required by the order to reside: Powers of Criminal Courts (Sentencing) Act 2000 s 41(9) (as so amended and repealed; amended by SI 2008/912).

10 See note 7.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 41(5)(a) (as amended and repealed (see notes 2, 6); amended by SI 2005/886; SI 2008/912).

12 As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

13 Powers of Criminal Courts (Sentencing) Act 2000 s 41(5)(b) (repealed: see note 2). See note 9. If an order specifies a local authority for these purposes the authority specified must be the local authority within whose area it appears to the court that the offender resides or will reside: s 41(5) (repealed).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 42(1) (as amended and repealed: see notes 2, 6). Without prejudice to the power of the court under s 130 to make a compensation order (see PARA 375 et seq), the payment of sums by way of damages for injury or compensation for loss must not be included among the additional requirements of a community rehabilitation order: s 42(3) (as so amended and repealed).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 42(2)(a) (as amended and repealed: see notes 2, 6). The requirements referred to in the text are the requirements set out in Sch 2 (as enacted on 4 April 2005).

16 If the offender was aged 18 or over on the date of his conviction for the offence, it is the opinion of the court that he is dependent on or has a propensity to misuse specified Class A drugs, and the offence is a trigger offence: Powers of Criminal Courts (Sentencing) Act 2000 s 42(2B) (as added and repealed: see notes 2, 6).

17 If the offender was aged 18 or over on the date of his conviction for the offence and it is the opinion of the court that he is dependent on or has a propensity to misuse specified Class A drugs and the misuse by the offender of any specified Class A drug caused or contributed to the offence: Powers of Criminal Courts (Sentencing) Act 2000 s 42(2C) (as added and repealed: see notes 2, 6).

18 For these purposes a drug abstinence requirement is a requirement for the offender to abstain from misusing specified Class A drugs and to provide, when instructed to do so by the responsible officer, any sample mentioned in the instruction for the purpose of ascertaining whether he has any specified Class A drug in his body: Powers of Criminal Courts (Sentencing) Act 2000 s 42(2A) (as added and repealed: see notes 2, 6). The function of giving instructions for these purposes must be exercised in accordance with guidance given from time to time by the Secretary of State; and the Secretary of State may make rules for regulating the provision of samples in pursuance of such instructions: s 42(2E) (as so added and repealed).

19 Powers of Criminal Courts (Sentencing) Act 2000 s 42(2)(b) (as added and repealed: see notes 2, 6). The order may not include a drug abstinence requirement if the community rehabilitation order includes any requirement in respect of drugs under Sch 2 para 6 or the community sentence includes a drug treatment and testing order or a drug abstinence order (s 42(2D) (as so added and repealed)), and the court must not include a drug abstinence requirement in the order unless the court has been notified by the Secretary of State that arrangements for implementing such requirements are available in the area proposed to be specified under s 41(3) (see note 9) and the notice has not been withdrawn (s 42(2F) (as so added and repealed)).

20 Powers of Criminal Courts (Sentencing) Act 2000 s 41(5)(a) (as amended and repealed: see notes 2, 6).

21 See the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 (as enacted on 4 April 2005).

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196. Community punishment orders.

Where a person aged 16 or over¹ is convicted of an offence punishable with imprisonment² committed prior to 4 April 2005³ the court by or before which he is convicted may⁴ make a community punishment order, that is to say, an order requiring him to perform⁵ a specified number of hours of unpaid work⁶. A court may not, however, make a community punishment order in respect of an offender unless the court is satisfied⁷ that the offender is a suitable person to perform work under such an order⁸ or unless it is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the local justice area in which he resides or will reside⁹. The work required to be performed under a community punishment order must be performed during the period of 12 months beginning with the date of the order; but, unless revoked, the order must remain in force until the offender has worked under it for the number of hours specified in it¹⁰. It may also be compulsory¹¹, but may be discretionary¹², for a drug abstinence requirement¹³ to be included in a community punishment order¹⁴.

An offender in respect of whom a community punishment order is in force must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer and notify him of any change of address, and must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer¹⁵. The instructions so given by the responsible officer must, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs or with the requirements of any other community order to which he may be subject; and any interference with the times, if any, at which he normally works or attends school or any other educational establishment¹⁶.

Community punishment orders may also be made in respect of certain persistent petty offenders¹⁷.

1 As to the age of an offender for sentencing purposes see PARA 27.

2 As to an offence punishable with imprisonment see PARA 6 note 5.

3 The Powers of Criminal Courts (Sentencing) Act 2000 ss 42, 46, 47, 50 (see the text and notes 4-17) were repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167). In connection with offences committed after 4 April 2005 see PARA 168 et seq.

4 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (repealed).

5 Ie in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 47 (repealed) (see the text and notes 6, 10-16).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 46(1), (2) (ss 46(2)-(6), (8)-(11), (13), 47(1), (3), (4), (5) (a) amended, ss 42(2B), (2C), (2E), (2F), 47(3A)-(3C) added, by the Criminal Justice and Court Services Act 2000 ss 44(3)(a), 49(1), (2), Sch 7 paras 2, 4, 160, 168, 169, Sch 8; Powers of Criminal Courts (Sentencing) Act 2000 s 46 repealed (see note 3)). The number of hours which a person may be required to work under a community punishment order must be specified in the order and must be in the aggregate not less than 40 and not more than 240: s 46(3) (as so amended and repealed). The Secretary of State may by order direct that s 46(3) be amended by substituting, for the maximum number of hours for the time being specified therein such number

of hours as may be specified in the order: s 50 (repealed (see note 3)). At the date at which this volume states the law no such order had been made. Where a court makes community punishment orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent may not exceed 240: s 46(8) (as so amended and repealed).

Before making a community punishment order the court must explain to the offender in ordinary language the purpose and effect of the order (and in particular the requirements of the order as specified in s 47(1)-(3) (see the text and notes 6, 10-16)), the consequences which may follow under Sch 3 Pt II (as enacted on 4 April 2005) if he fails to comply with any of those requirements, and that the court has power (under Sch 3 Pts III, IV (as enacted on that date)) to review the order on the application either of the offender or of the responsible officer: s 46(10) (as so amended and repealed).

In s 46, Sch 3 'responsible officer', in relation to an offender subject to a community punishment order, means the person mentioned in s 46(4) (see note 7) or s 47(5)(b) (see note 15) who, as respects the order, is responsible for discharging the functions conferred by that provision: s 46(13) (as so amended and repealed).

7 Ie after hearing (if the court thinks it necessary) an appropriate officer: Powers of Criminal Courts (Sentencing) Act 2000 s 46(4) (as amended and repealed: see notes 3, 6). For this purpose 'appropriate officer' means: (1) in the case of an offender aged 18 or over, an officer of a local probation board, an officer of a provider of probation services or social worker of a local authority social services department (s 46(5)(a) (as so amended and repealed; amended by SI 2008/912)); and (2) in the case of an offender aged under 18, an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority social services department or a member of a youth offending team (Powers of Criminal Courts (Sentencing) Act 2000 s 46(5)(b) (as so amended and repealed; amended by SI 2008/912)). As to local probation boards and providers of probation services see PARA 733 et seq. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1703.

The court by which a community punishment order is made must forthwith give copies of the order to: (a) if the offender is aged 18 or over, an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court (as the case may be) (Powers of Criminal Courts (Sentencing) Act 2000 s 46(11)(a) (as so amended and repealed; amended by SI 2008/912)); or (b) if the offender is aged under 18, an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court or a member of a youth offending team assigned to the court (Powers of Criminal Courts (Sentencing) Act 2000 s 46(11)(b) (substituted by SI 2008/912; repealed (see note 3))), and he must give a copy to the offender and to the responsible officer. The court by which such an order is made must also, except where it itself acts in the local justice area specified in the order, send to the designated officer for that area a copy of the order and such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order: Powers of Criminal Courts (Sentencing) Act 2000 s 46(12) (amended by SI 2001/618; SI 2005/886; repealed (see note 3)).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 46(4) (as amended and repealed: see notes 3, 6).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 46(6) (as amended and repealed (see notes 3, 6); amended by SI 2005/886). The Powers of Criminal Courts (Sentencing) Act 2000 s 46(6) has effect subject to Sch 4 paras 3, 4 (as enacted on 4 April 2005) (transfer of order to Scotland or Northern Ireland): s 46(7) (as so amended and repealed). A community punishment order must specify the petty sessions area in which the offender resides or will reside: s 46(9)(a) (as so amended and repealed).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 47(3) (as amended and repealed: see notes 3, 6). This is subject to Sch 3 para 22 (as enacted on 4 April 2005) (power to extend order): s 47(3) (as so amended and repealed).

11 Ie if the offender was aged 18 or over on the date of his conviction for the offence, it is the opinion of the court that he is dependent on or has a propensity to misuse specified Class A drugs, and the offence is a trigger offence: Powers of Criminal Courts (Sentencing) Act 2000 ss 42(2B), 47(3A) (as added and repealed: see notes 3, 6).

12 Ie if the offender was aged 18 or over on the date of his conviction for the offence and it is the opinion of the court that he is dependent on or has a propensity to misuse specified Class A drugs and the misuse by the offender of any specified Class A drug caused or contributed to the offence: Powers of Criminal Courts (Sentencing) Act 2000 ss 42(2C), 47(3A) (as added and repealed: see notes 3, 6).

13 For these purposes a drug abstinence requirement is a requirement for the offender to abstain from misusing specified Class A drugs and to provide, when instructed to do so by the responsible officer, any sample mentioned in the instruction for the purpose of ascertaining whether he has any specified Class A drug in his body: Powers of Criminal Courts (Sentencing) Act 2000 s 42(2A) (as added and repealed: see notes 3, 6). The function of giving instructions for these purposes must be exercised in accordance with guidance given from

time to time by the Secretary of State; and the Secretary of State may make rules for regulating the provision of samples in pursuance of such instructions: ss 42(2E), 47(3C) (as so added and repealed).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 47(3A) (as added and repealed: see notes 3, 6). The order may not include a drug abstinence requirement if the community sentence includes a drug treatment and testing order or a drug abstinence order (s 47(3B) (as so added and repealed)), and the court must not include a drug abstinence requirement in the order unless the court has been notified by the Secretary of State that arrangements for implementing such requirements are available in the area proposed to be specified under s 41(3) (see PARA 195 note 9) and the notice has not been withdrawn (ss 42(2F), 47(3C) (as so added and repealed)).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 47(3A) (as added and repealed: see notes 3, 6). If the offender is aged 18 or over at the time when the order is made, the functions conferred by s 47 on the 'responsible officer' must be discharged by an officer of a local probation board appointed for or assigned to the local justice area specified in the order or (as the case may be) an officer of a provider of probation services acting in the local justice area specified in the order: s 47(4) (as so amended and repealed; amended by SI 2005/886; SI 2008/912). If the offender is aged under 18 at that time, those functions must be discharged by an officer of a local probation board appointed for or assigned to the local justice area specified in the order or (as the case may be) an officer of a provider of probation services acting in the local justice area specified in the order (Powers of Criminal Courts (Sentencing) Act 2000 s 47(5)(a) (as so amended and repealed)) or a member of a youth offending team established by a local authority specified in the order (s 47(5)(b) (as so amended and repealed)). Where the offender is aged under 18 at the time the order is made, a community punishment order may also specify a local authority for the purposes of s 47(5)(b), and if the order specifies a local authority for those purposes, the authority specified must be the local authority within whose area it appears to the court that the offender resides or will reside: s 46(9)(b) (as so amended and repealed). The reference in s 47(4) to the local justice area specified in the order and the reference in s 47(5) to a local authority so specified are references to the area or an authority for the time being so specified, whether under s 46(9) or by virtue of Sch 3 Pt IV (power to amend orders): s 47(6) (amended by SI 2005/886; repealed (see note 3)).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 47(2) (repealed: see note 3).

17 See the Powers of Criminal Courts (Sentencing) Act 2000 s 59 (as enacted on 4 April 2005).

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197. Community punishment and rehabilitation orders.

A community punishment and rehabilitation order is an order requiring a person to be under supervision for a period specified in the order¹ and to perform unpaid work for a specified number of hours². Such an order may³ be made where a person aged 16 or over⁴ is convicted of an offence punishable with imprisonment⁵ committed prior to 4 April 2005⁶ and the court by or before which he is convicted is of the opinion that the making of a community punishment and rehabilitation order is desirable in the interests of securing the rehabilitation of the offender⁷ or protecting the public from harm from him or preventing the commission by him of further offences⁸. The statutory provisions governing community rehabilitation orders⁹ apply to a community punishment and rehabilitation order in so far as it imposes¹⁰ a supervision requirement¹¹, and the statutory provisions governing community punishment orders¹² apply to a community punishment and rehabilitation order in so far as it imposes¹³ a supervision requirement¹⁴. Provision is made in connection with failures to comply with community punishment and rehabilitation orders¹⁵ and the administration of such orders in relation to persons residing in Scotland or Northern Ireland¹⁶.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 51(1)(a) (repealed: see note 6). The specified period must be not less than 12 months nor more than three years: s 51(1)(a), (2) (s 51(2)-(6) amended by the Criminal Justice and Court Services Act 2000 s 45(3), Sch 7 paras 1-3; Powers of Criminal Courts (Sentencing) Act 2000 s 46 repealed (see note 6)).

2 Powers of Criminal Courts (Sentencing) Act 2000 s 51(1)(b) (repealed: see note 6). The specified number of hours must be in the aggregate not less than 40 nor more than 100: s 51(1)(b) (repealed).

3 Ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (repealed).

4 As to the age of an offender for sentencing purposes see PARA 27.

5 As to an offence punishable with imprisonment see PARA 6 note 5.

6 The Powers of Criminal Courts (Sentencing) Act 2000 s 51 (see the text and notes 7-16) was repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167). In connection with offences committed after 4 April 2005 see PARA 168 et seq.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 51(3)(a) (as amended and repealed: see notes 1, 6).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 51(3)(b) (as amended and repealed: see notes 1, 6).

9 Ie the Powers of Criminal Courts (Sentencing) Act 2000 ss 41, 42, Sch 2 (see PARA 195).

10 Ie by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 51(1)(a) (see the text and note 1).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 51(4)(a) (as amended and repealed: see notes 1, 6).

12 Ie the Powers of Criminal Courts (Sentencing) Act 2000 ss 46, 47, Sch 2 (see PARA 196).

13 Ie by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 51(1)(b) (see the text and note 2).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 51(4)(b) (as amended and repealed: see notes 1, 6).

15 See the Powers of Criminal Courts (Sentencing) Act 2000 s 51(5) (as amended and repealed: see notes 1, 6) and Sch 3 (as enacted on 4 April 2005).

16 See the Powers of Criminal Courts (Sentencing) Act 2000 s 51(6) (as amended and repealed: see notes 1, 6) and Sch 4 (as enacted on 4 April 2005).

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B. ORDERS RELATING TO THE MISUSE OF DRUGS

198. Drug treatment and testing orders.

A drug treatment and testing order is an order containing specified requirements and provisions relating to drug treatment and testing¹. Such an order may be made² where a person aged 16 or over³ is convicted of an offence committed prior to 4 April 2005⁴, if the court is satisfied that the offender is dependent on or has a propensity to misuse drugs and that his dependency or propensity is such as requires and may be susceptible to treatment⁵ (although a court may not make a drug treatment and testing order unless the offender expresses his willingness to comply with its requirements⁶ and the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order⁷) and has effect for a period specified in the order of not less than six months nor more than three years⁸.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 52(1)(b), (2) (repealed: see note 4). The specified requirements and provisions are set out in ss 53, 54 (see PARAS 199-200).

2 The subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (repealed). Before making a drug treatment and testing order the court must explain to the offender in ordinary language the effect of the order and of the requirements proposed to be included in it, the consequences which may follow (under Sch 3 Pt II as enacted on 4 April 2005) if he fails to comply with any of those requirements, that the order will be periodically reviewed at intervals as provided for in the order (by virtue of s 54(6)) and that the order may be reviewed (under Sch 3 Pts III, IV as enacted on that date) on the application either of the offender or of the responsible officer: s 52(6) (repealed: see note 4). As to the meaning of 'responsible officer' for these purposes see s 54(3); and PARA 200 note 4 (definition applied by s 52(6) (repealed)). Where a drug treatment and testing order is made, the court making the order must (subject to s 57(3): see PARA 200) forthwith give copies of the order to an officer of a local probation board assigned to the court, or (as the case may be) an officer of a provider of probation services acting at the court: s 57(1) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; SI 2008/912; repealed (see note 4)). An officer of a local probation board or officer of a provider of probation services to whom copies of an order are given under s 57 must give a copy to the offender, the treatment provider (see PARA 199) and the responsible officer (see PARA 200 note 4): Powers of Criminal Courts (Sentencing) Act 2000 s 57(4) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; SI 2008/912; repealed (see note 4)).

3 As to the age of an offender for sentencing purposes see PARA 27.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 52(1). Sections 52, 53, 57, 58 (see the text and notes 5-8) was repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167). In connection with offences committed after 4 April 2005 see PARA 168 et seq. Drug treatment and testing orders may also not be made in relation to an offence committed before 30 September 1998: Powers of Criminal Courts (Sentencing) Act 2000 s 52(1) (repealed).

The Secretary of State may by order amend s 52(1) by substituting a different period for the minimum or maximum period for the time being specified in that subsection: s 58 (repealed). At the date at which this volume states the law no such order had been made.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 52(3) (repealed: see note 4). For the purpose of ascertaining for the purposes of s 52(3) whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify; but the court must not make such an order unless the offender expresses his willingness to comply with its requirements: s 52(4) (repealed).

A court may not make a drug treatment and testing order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the order under s 54(1) (see PARA 200) and the notice has not been withdrawn: s 52(5) (repealed).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 52(7) (repealed: see note 4).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 53(3) (repealed: see note 4). As to the specified treatments (which for this purpose include arrangements for the reception of the offender where he is to be required to submit to treatment as a resident: s 53(3) (repealed)) see PARA 199.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 52(1)(a) (repealed: see note 4). This period is referred to as the 'treatment and testing period': s 52(1)(a) (repealed).

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199. The drug treatment and testing requirements.

A drug treatment and testing order¹ must include a requirement (the 'treatment requirement') that the offender submit, during the whole of the treatment and testing period², to treatment by or under the direction of a specified person having the necessary qualifications or experience (the 'treatment provider') with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs³. The required treatment for any particular period must be treatment as a resident in such institution or place as may be specified in the order⁴ or treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified⁵, but the nature of the treatment must not be specified in the order except as so⁶ mentioned⁷. A drug treatment and testing order must include a requirement (the 'testing requirement') that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender must during that period⁸ provide samples of such description as may be so determined⁹.

1 See PARA 198.

2 As to the treatment and testing period see PARA 198 note 8.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 53(1) (s 53 (see the text and notes 4-9) repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167)). In connection with offences committed after 4 April 2005 see PARA 168 et seq.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 53(2)(a) (repealed: see note 3).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 53(2)(b) (repealed: see note 3).

6 Ie in the Powers of Criminal Courts (Sentencing) Act 2000 s 53(2) (see the text and notes 4-5).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 53(2) (repealed: see note 3).

8 Ie at such times or in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider: Powers of Criminal Courts (Sentencing) Act 2000 s 53(4) (repealed: see note 3).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 53(4) (repealed: see note 3). The testing requirement must specify for each month the minimum number of occasions on which samples are to be provided: s 53(5) (repealed).

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200. Supervision and periodic review.

A drug treatment and testing order¹ must provide that, for the treatment and testing period², the offender is to be under the supervision of an officer of a local probation board appointed for or assigned to the local justice area specified in the order³ or (as the case may be) an officer of a provider of probation services acting in the local justice area specified in the order⁴. The order must also require the offender to keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address⁵ and provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement⁶ be communicated to the responsible officer⁷.

A drug treatment and testing order must also provide for the order to be reviewed periodically at intervals of not less than one month⁸, and at such a hearing the court may, after considering the responsible officer's report⁹, amend any requirement or provision of the drug treatment and testing order¹⁰.

1 See PARA 198.

2 As to the treatment and testing period see PARA 198 note 8.

3 A drug treatment and testing order must include a provision specifying the local justice area in which it appears to the court making the order that the offender resides or will reside: Powers of Criminal Courts (Sentencing) Act 2000 s 54(1) (amended by SI 2005/886).

Sections 54, 55, 57 (see the text and notes 4-10) are repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167). In connection with offences committed after 4 April 2005 see PARA 168 et seq.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 54(2) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; SI 2005/886; SI 2008/912; repealed (see note 3)). As to local probation boards and providers of probation services see PARA 733 et seq. In the Powers of Criminal Courts (Sentencing) Act 2000 'responsible officer', in relation to an offender who is subject to a drug treatment and testing order, means the officer of a local probation board or officer of a provider of probation services responsible for his supervision: s 54(3) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; SI 2008/912).

Supervision by the responsible officer must be carried out to such extent only as may be necessary for the purpose of enabling him to report on the offender's progress to the court responsible for the order, to report to that court any failure by the offender to comply with the requirements of the order and to determine whether the circumstances are such that he should apply to that court for the revocation or amendment of the order: Powers of Criminal Courts (Sentencing) Act 2000 s 54(5) (repealed).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 54(4)(a) (repealed: see note 3).

6 As to the testing requirement see PARA 199.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 54(4)(b) (repealed: see note 3).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 54(6)(a) (repealed: see note 3). The order must provide for each review of the order to be made, subject to s 55(6) (see below), at a hearing held for the purpose by the court responsible for the order (a 'review hearing') (s 54(6)(b) (repealed)), require the offender to attend each review hearing (s 54(6)(c) (repealed)), provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the order (s 54(6)(d))

(repealed)) and provide for each such report to include the test results communicated to the responsible officer under s 54(4)(b) (see the text and note 7) and the views of the treatment provider as to the treatment and testing of the offender (s 54(6)(e) (repealed)). References in s 54 to the court responsible for a drug treatment and testing order are references to the court by which the order is made (s 54(7)(b) (repealed)) unless the area specified in an order made by a magistrates' court is not the area in which the court acts, in which event the court may, if it thinks fit, include in the order provision specifying for the purposes of s 54(7) a magistrates' court which acts in the area specified in the order (s 54(8) (amended by SI 2005/886; repealed)) and if it does, the court responsible for the order is the court so specified (Powers of Criminal Courts (Sentencing) Act 2000 s 54(7) (repealed)). Where a drug treatment and testing order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, for the purposes of s 54(7)(b) it is deemed to have been made by the Crown Court: s 54(8) (repealed). Where a drug treatment and testing order is made by a magistrates' court and another magistrates' court is responsible for the order (within the meaning given by s 54(7)) by virtue of being specified in the order in accordance with s 54(8) the court making the order must not give copies of it as mentioned in s 55(1) (see note 10) but must forthwith send copies of it to the court responsible for the order and that court must, as soon as reasonably practicable after the order is made, give copies of it to an officer of a local probation board assigned to that court, or (as the case may be) an officer of a provider of probation services acting at that court: s 57(3) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; SI 2008/912; repealed (see note 3)). An officer of a local probation board or officer of a provider of probation services to whom copies of an order are given under s 57 must give a copy to the offender, the treatment provider (see PARA 199) and the responsible officer: Powers of Criminal Courts (Sentencing) Act 2000 s 57(4) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; SI 2008/912; repealed (see note 3))).

9 le the report referred to in the Powers of Criminal Courts (Sentencing) Act 2000 s 54(6) (see note 8).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 55(1) (repealed: see note 3). The court may not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended (s 55(2)(a) (repealed)), may not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in s 52(1) (see PARA 198) or to increase it above the maximum so specified (s 55(2)(b) (repealed)), and except with the consent of the offender may not amend any requirement or provision of the order while an appeal against the order is pending (s 55(2)(c) (repealed)). Where a drug treatment and testing order is amended under s 55(1), the court amending the order must forthwith give copies of the order as amended to an officer of a local probation board assigned to the court, or (as the case may be) an officer of a provider of probation services operating at the court (s 57(2) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 4, 160, 171; SI 2008/912; repealed (see note 3))), although this is subject to the proviso that where a magistrates' court amends a drug treatment and testing order under the Powers of Criminal Courts (Sentencing) Act 2000 s 55(1) and the order as amended provides for a different magistrates' court to be responsible for the order, the court amending the order must not give copies of the order as amended as mentioned in s 57(2) but must forthwith send copies of it to the court responsible for the order and that court must, as soon as reasonably practicable after the order is amended, give copies to an officer of a local probation board assigned to that court, or (as the case may be) an officer of a provider of probation services acting at that court (s 57(3A) (added by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 171; amended by SI 2008/912; repealed (see note 3))).

If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may revoke the order (Powers of Criminal Courts (Sentencing) Act 2000 s 55(3)(a) (repealed)) and deal with him, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence (s 55(3)(b) (repealed)): in dealing with the offender under s 55(3)(b) the court must take into account the extent to which the offender has complied with the requirements of the order (s 55(4)(a) (repealed)) and may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in s 79(2) (as enacted on 4 April 2005) (s 55(4)(b) (repealed)). Where the order was made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under s 55(3)(b) in respect of the offender after he attains the age of 18 must be powers to do either or both of the following: to impose a fine not exceeding £5,000 for the offence in respect of which the order was made (s 55(5)(a) (repealed)); and to deal with the offender for that offence in any way in which the court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months (s 55(5)(b) (repealed)).

If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing (s 55(6) (repealed)) and if at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place (s 55(7) (repealed)). At that hearing the court, after considering that report, may exercise the powers conferred by s 55 as if the hearing were a review hearing (s 55(8)(a) (repealed)) and so amend the order as to provide for each subsequent review to be made at a review hearing (s 55(8)(b) (repealed)).

In s 55 any reference to the court, in relation to a review without a hearing, is construed as a reference to a judge of the court (in the case of the Crown Court) or as a reference to a justice of the peace acting for the commission area for which the court acts (in the case of a magistrates' court): s 55(9) (repealed).

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201. Drug abstinence orders.

A drug abstinence order is an order which requires the offender to abstain from misusing specified Class A drugs¹ and to provide, when instructed to do so by the responsible officer², any sample mentioned in the instruction for the purpose of ascertaining whether he has any specified Class A drug in his body³. Such an order may be made⁴ where a person aged 16 or over⁵ is convicted of an offence committed prior to 4 April 2005⁶, if the court is of the opinion that the offender is dependent on, or has a propensity to misuse, specified Class A drugs⁷ and the offence in question is a trigger offence or, in the opinion of the court, the misuse by the offender of any specified Class A drug caused or contributed to the offence in question⁸ (although a court may not make a drug abstinence order unless the court has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified⁹ in the order and the notice has not been withdrawn¹⁰) and has effect for a period specified in the order of not less than six months nor more than three years¹¹. A drug abstinence order must also provide that, for the period for which the order has effect, the offender must be under the supervision of a person, being a person of a description specified in an order made by the Secretary of State¹². Provision is also made in connection with the breach of drug abstinence orders¹³.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(1)(a), (2) (ss 58A, 58B added by the Criminal Justice and Court Services Act 2000 s 47; repealed (see note 6)).

2 'Responsible officer', in relation to an offender who is subject to a drug abstinence order, means the person who is responsible for his supervision: Powers of Criminal Courts (Sentencing) Act 2000 s 58A(5) (as added and repealed: see notes 1, 6).

3 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(1)(b) (as added and repealed: see notes 1, 6). The function of giving instructions for the purposes of s 58A(1)(b) must be exercised in accordance with guidance given from time to time by the Secretary of State: s 58A(6) (as so added and repealed). The Secretary of State may make rules for regulating the provision of samples in pursuance of such instructions: see s 58A(8) (as so added and repealed). At the date at which this volume states the law no such rules had been made.

4 The subject to the Powers of Criminal Courts (Sentencing) Act 2000 ss 34-36 (repealed). Before making a drug abstinence order the court must explain to the offender in ordinary language the effect of the order and of the requirements proposed to be included in it, the consequences which may follow (under Sch 3 Pt II as enacted on 4 April 2005) if he fails to comply with any of those requirements, and that the order may be reviewed (under Sch 3 Pts III, IV as enacted on that date) on the application either of the offender or of the responsible officer: s 58B(1) (repealed: see note 6).

5 As to the age of an offender for sentencing purposes see PARA 27.

6 The Powers of Criminal Courts (Sentencing) Act 2000 ss 58A, 58B were repealed by the Criminal Justice Act 2003 s 303, Sch 37 Pt 7 as from 4 April 2005, other than in relation to an offence committed before that date (see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3); and PARA 167). In connection with offences committed after 4 April 2005 see PARA 168 et seq.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(3)(a) (as added and repealed: see notes 1, 6).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(3)(b) (as added and repealed: see notes 1, 6).

9 The under the Powers of Criminal Courts (Sentencing) Act 2000 s 54(1), as applied by s 58B(2) (as added and repealed: see notes 1, 6), which provides that s 54 (supervision and periodic review of drug treatment and

testing orders: see PARA 200) (except s 54(2), (3), (6)) and s 57 (copies of orders: see PARA 198 et seq) (except s 57(2), (3A), (4)(b)) apply for the purposes of ss 58A, 58B as if references to drug treatment and testing orders were references to drug abstinence orders.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(9) (as added and repealed: see notes 1, 6).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(7) (as added and repealed: see notes 1, 6).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 58A(4) (as added and repealed: see notes 1, 6). See the Drug Abstinence Order (Responsible Officer) (No 2) Order 2001, SI 2001/3494.

13 See the Powers of Criminal Courts (Sentencing) Act 2000 s 58B(3) (as added and repealed: see notes 1, 6) and Sch 3 (as enacted on 4 April 2005).

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(3) YOUTH REHABILITATION ORDERS AND YOUTH COMMUNITY ORDERS

(i) Youth Rehabilitation Orders

A. MAKING OF YOUTH REHABILITATION ORDER

202. Youth rehabilitation orders and requirements.

Where a person aged under 18¹ is convicted of an offence committed on or after 30 November 2009² the court by or before which the person is convicted may make an order (a 'youth rehabilitation order'³) imposing on the person any one or more of:

- 654 (1) an activity requirement⁴;
- 655 (2) a supervision requirement⁵;
- 656 (3) in a case where the offender is aged 16 or 17 at the time of the conviction, an unpaid work requirement⁶;
- 657 (4) a programme requirement⁷;
- 658 (5) an attendance centre requirement⁸;
- 659 (6) a prohibited activity requirement⁹;
- 660 (7) a curfew requirement¹⁰;
- 661 (8) an exclusion requirement¹¹;
- 662 (9) a residence requirement¹²;
- 663 (10) a local authority residence requirement¹³;
- 664 (11) a mental health treatment requirement¹⁴;
- 665 (12) a drug treatment requirement¹⁵;
- 666 (13) a drug testing requirement¹⁶;
- 667 (14) an intoxicating substance treatment requirement¹⁷; and
- 668 (15) an education requirement¹⁸.

A youth rehabilitation order must specify the local justice area in which the offender resides or will reside¹⁹ and may also, and in certain circumstances must, impose an electronic monitoring requirement²⁰, and may make provision for intensive supervision and surveillance²¹ and for fostering²².

1 As to the age of an offender for sentencing purposes see PARA 27. In respect of offences committed on or after 30 November 2009 the age limit for the making of community orders is raised to 18 (see PARA 169), the existing youth community orders for young offenders (applicable to offenders aged under 16 or under 18 depending on the type of order being made) are abolished (see PARA 229), and youth rehabilitation orders are introduced for offenders aged under 18 (see note 2; and PARA 163).

For the purposes of any provision of the Criminal Justice and Immigration Act 2008 Pt 1 which requires the determination of the age of a person by the court, the Secretary of State or a local authority, the person's age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State or a local authority to be after considering any available evidence: s 7(2) (not yet in force).

2 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see the Criminal Justice and Immigration Act 2008 Pt 1; the

Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(a)-(h), (m)-(p); and PARA 163. Where an offence for which the offender has been convicted was committed before 30 November 2009 the court may make a youth community order (which may not be made in respect of offences committed on or after that date): see PARAS 163, 229 et seq. As to community sentences generally see PARA 163 et seq.

3 The power to make a youth rehabilitation order is subject to the Criminal Justice Act 2003 ss 148, 150 (restrictions on community sentences etc: see PARAS 164, 166) and the provisions of the Criminal Justice and Immigration Act 2008 Sch 1 Pts 1, 3 (see PARAS 204-205, 208-209): s 1(6). Subject to Sch 1 para 30(2) (see PARA 208) a youth rehabilitation order takes effect on the day after the day on which the order is made: Sch 1 para 30(1).

Where the Crown Court makes a youth rehabilitation order it may include in the order a direction that further proceedings relating to the order be in a youth court or other magistrates' court (subject to Sch 2 para 7: see PARA 214): Sch 1 para 36(1). For this purpose 'further proceedings', in relation to a youth rehabilitation order, means proceedings for any failure to comply with the order within the meaning given by Sch 2 para 1(2)(b) or on any application for amendment or revocation of the order under Sch 2 Pt 3 (see PARAS 216-217) or Pt 4 (see PARAS 218-220): Sch 1 para 36(2). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

The court by which any youth rehabilitation order is made must forthwith provide copies of the order:

- 177 (1) to the offender (Sch 1 para 34(1)(a));
- 178 (2) if the offender is aged under 14, to the offender's parent or guardian (Sch 1 para 34(1)(b));
and
- 179 (3) to a member of a youth offending team assigned to the court, to an officer of a local probation board assigned to the court or to an officer of a provider of probation services (Sch 1 para 34(1)(c)).

Provision is also made as to the provision of copies to the persons concerned with the supervision of requirements imposed by the orders: see Sch 1 para 34(4). See also Sch 1 para 34(2); and note 19.

If a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, any reference in Pt 1 (except in Sch 1 paras 4, 25) to the offender's parent or guardian is to be read as a reference to that authority: s 7(4). 'Parental responsibility' has the same meaning as it has in the Children Act 1989 by virtue of s 3 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134); and 'social services functions' has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of s 1A (see **SOCIAL SECURITY AND PENSIONS**): Criminal Justice and Immigration Act 2008 s 7(5). As to the meaning of 'guardian' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 747 (definition applied by the Criminal Justice and Immigration Act 2008 s 7(1)).

In relation to England 'local authority' means a county council, a district council whose district does not form part of an area that has a county council, a London borough council or the Common Council of the City of London in its capacity as a local authority; and in relation to Wales it means a county council or a county borough council: Criminal Justice and Immigration Act 2008 s 7(1). As to the counties in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq.

'Youth offending team' means a team established under the Crime and Disorder Act 1998 s 39: Criminal Justice and Immigration Act 2008 s 7(1). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq. 'Local probation board' means a local probation board established under the Criminal Justice and Court Services Act 2000 s 4 (see PARA 737): Criminal Justice and Immigration Act 2008 s 7(1). As to local probation boards and providers of probation services see PARA 733 et seq.

4 Criminal Justice and Immigration Act 2008 s 1(1)(a). See Sch 1 paras 6-8; and PARA 288 (noting that by virtue of Sch 1 para 1(1)(a), the power to include an activity requirement in a youth rehabilitation order is particularly subject to Sch 1 para 8(3), (4)). An activity requirement may form the basis of an order with intensive supervision and surveillance: see PARA 204.

5 Criminal Justice and Immigration Act 2008 s 1(1)(b). See Sch 1 para 9; and PARA 298. A supervision requirement may form part of an order with intensive supervision and surveillance and an order with fostering: see PARAS 204, 205.

6 Criminal Justice and Immigration Act 2008 s 1(1)(c). See Sch 1 para 10; and PARA 287 (noting that by virtue of Sch 1 para 1(1)(b), the power to include an unpaid work requirement in a youth rehabilitation order is particularly subject to Sch 1 para 10(3)).

7 Criminal Justice and Immigration Act 2008 s 1(1)(d). See Sch 1 para 11; and PARA 289 (noting that by virtue of Sch 1 para 1(1)(c), the power to include a programme work requirement in a youth rehabilitation order is particularly subject to Sch 1 para 11(3), (4)).

8 Criminal Justice and Immigration Act 2008 s 1(1)(e). See Sch 1 para 12; and PARA 300 (noting that by virtue of Sch 1 para 1(1)(d), the power to include an attendance centre requirement in a youth rehabilitation order is particularly subject to Sch 1 para 12(3)).

9 Criminal Justice and Immigration Act 2008 s 1(1)(f). See Sch 1 para 13; and PARA 290 (noting that by virtue of Sch 1 para 1(1)(e), the power to include a prohibited activity requirement in a youth rehabilitation order is particularly subject to Sch 1 para 13(2)).

10 Criminal Justice and Immigration Act 2008 s 1(1)(g). See Sch 1 para 14; and PARA 291. A curfew requirement may form part of an order with intensive supervision and surveillance: see PARA 204.

11 Criminal Justice and Immigration Act 2008 s 1(1)(h). See Sch 1 para 15; and PARA 292.

12 Criminal Justice and Immigration Act 2008 s 1(1)(i). See Sch 1 para 16; and PARA 293 (noting that by virtue of Sch 1 para 1(1)(f), the power to include a residence requirement in a youth rehabilitation order is particularly subject to Sch 1 para 16(2), (4), (7)).

13 Criminal Justice and Immigration Act 2008 s 1(1)(j). See Sch 1 para 17; and PARA 301 (noting that by virtue of Sch 1 para 1(1)(g), the power to include a local authority residence requirement in a youth rehabilitation order is particularly subject to Sch 1 paras 17(3), (4), 19).

14 Criminal Justice and Immigration Act 2008 s 1(1)(k). See Sch 1 para 20; and PARA 294 (noting that by virtue of Sch 1 para 1(1)(h), the power to include a mental health treatment requirement in a youth rehabilitation order is particularly subject to Sch 1 para 20(3)).

15 Criminal Justice and Immigration Act 2008 s 1(1)(l). See Sch 1 para 17; and PARA 301 (noting that by virtue of Sch 1 para 1(1)(i), the power to include a drug treatment requirement in a youth rehabilitation order is particularly subject to Sch 1 para 22(2), (4)).

16 Criminal Justice and Immigration Act 2008 s 1(1)(m). See Sch 1 para 23; and PARA 296 (noting that by virtue of Sch 1 para 1(1)(j), the power to include a drug testing requirement in a youth rehabilitation order is particularly subject to Sch 1 para 23(3)).

17 Criminal Justice and Immigration Act 2008 s 1(1)(n). See Sch 1 para 24; and PARA 297 (noting that by virtue of Sch 1 para 1(1)(k), the power to include an intoxicating substance treatment requirement in a youth rehabilitation order is particularly subject to Sch 1 para 24(2), (4)).

18 Criminal Justice and Immigration Act 2008 s 1(1)(o). See Sch 1 para 25; and PARA 303 (noting that by virtue of Sch 1 para 1(1)(l), the power to include an education requirement in a youth rehabilitation order is particularly subject to Sch 1 para 25(4)).

19 Criminal Justice and Immigration Act 2008 Sch 1 para 33. Where a youth rehabilitation order is made by the Crown Court or is made by a magistrates' court which does not act in the local justice area specified in the order, the court making the order must:

180 (1) provide to the magistrates' court acting in the local justice area specified in the order a copy of the order and such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order (Sch 1 para 34(2)(a)); and

181 (2) provide a copy of the order to the local probation board acting for that area or (as the case may be) a provider of probation services operating in that area (Sch 1 para 34(2)(b)).

20 See PARA 203.

21 See PARA 204.

22 See PARA 205.

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203. Electronic monitoring requirements in youth rehabilitation orders.

A youth rehabilitation order¹ may, in addition to the requirements which may generally be imposed², also impose an electronic monitoring requirement³, and it must impose such a requirement if it imposes a curfew requirement⁴ or an exclusion requirement⁵ unless:

- 669 (1) in the particular circumstances of the case, the court considers it inappropriate for the order to do so⁶; or
- 670 (2) the court is prevented⁷ from including such a requirement in the order⁸.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. The power to make a youth rehabilitation order is subject to the Criminal Justice Act 2003 ss 148, 150 (restrictions on community sentences etc: see PARAS 164, 166) and the provisions of the Criminal Justice and Immigration Act 2008 Sch 1 Pts 1, 3 (see PARAS 204-205, 208-209): s 1(6).

2 As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq.

3 Criminal Justice and Immigration Act 2008 s 1(2)(a). As to electronic monitoring requirements in youth rehabilitation orders see Sch 1 para 26; and PARA 299 (noting that by virtue of Sch 1 para 2(3), the power to include an electronic monitoring requirement in a youth rehabilitation order is particularly subject to Sch 1 para 26(3), (6)).

4 Criminal Justice and Immigration Act 2008 s 1(2)(b), Sch 1 para 2(1)(a). As to curfew requirements see PARA 275. The power to impose an electronic monitoring requirement in addition to a curfew requirement applies whether the curfew requirement is imposed by virtue of Sch 1 para 3(4)(b) (see PARA 204) or otherwise: Sch 1 para 2(1)(a).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 2(1)(b). As to exclusion requirements see PARA 276.

6 Criminal Justice and Immigration Act 2008 Sch 1 para 2(2)(a).

7 ie by the Criminal Justice and Immigration Act 2008 Sch 1 para 26(3) or (6) (see PARA 299).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 2(2)(a).

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204. Youth rehabilitation orders with intensive supervision and surveillance.

If:

- 671 (1) the court is dealing with an offender for an offence which is punishable with imprisonment¹;
- 672 (2) the court is of the opinion that the offence, or the combination of the offence and one or more offences associated² with it, was so serious that³ a custodial sentence⁴ would be⁵ appropriate⁶; and
- 673 (3) the offender was aged under 15 at the time of conviction, the court is of the opinion that the offender is a persistent offender⁷,

the court may, if it makes a youth rehabilitation order⁸ which imposes an activity requirement⁹, specify in relation to that requirement a specified number of days¹⁰ (an 'extended activity requirement')¹¹ and where it does so must also impose a supervision requirement¹², a curfew requirement¹³ and, if applicable¹⁴, an electronic monitoring requirement¹⁵. A youth rehabilitation order which imposes an extended activity requirement¹⁶ is¹⁷ known as a 'youth rehabilitation order with intensive supervision and surveillance'¹⁸.

1 Criminal Justice and Immigration Act 2008 s 1(4)(a). Any reference in Pt 1 to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders: s 7(3).

2 'Associated', in relation to offences, is to be read in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 161(1) (see PARA 19 note 9): Criminal Justice and Immigration Act 2008 s 7(1).

3 Ie but for the Criminal Justice and Immigration Act 2008 Sch 1 para 3 or 4 (see the text and notes 8-14; and PARA 205).

4 As to the meaning of 'custodial sentence' see the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2 (definition applied by the Criminal Justice and Immigration Act 2008 s 7(1)).

5 Or, if the offender was aged under 12 at the time of conviction, would be if the offender had been aged 12: Criminal Justice and Immigration Act 2008 s 1(4)(b).

6 Criminal Justice and Immigration Act 2008 s 1(4)(b).

7 Criminal Justice and Immigration Act 2008 s 1(4)(c). As to the age of an offender for sentencing purposes see PARAS 27, 202 note 1.

8 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. The power to make a youth rehabilitation order is subject to the Criminal Justice Act 2003 ss 148, 150 (restrictions on community sentences etc: see PARAS 164, 166) and the provisions of the Criminal Justice and Immigration Act 2008 Sch 1 Pts 1, 3 (see PARAS 204-205, 208-209): s 1(6). However, nothing in s 1(4)(b) (see the text and notes 2-6) or the Criminal Justice Act 2003 s 148(1) or (2)(b) prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender if the offender fails to comply with an order under the Criminal Justice Act 2003 s 161(2) (pre-sentence drug testing: see PARA 629): Criminal Justice and Immigration Act 2008 Sch 1 para 5(2).

9 As to activity requirements see PARA 272.

- 10 le more than 90 but not more than 180.
- 11 Criminal Justice and Immigration Act 2008 Sch 1 para 3(1)-(3).
- 12 Criminal Justice and Immigration Act 2008 Sch 1 para 3(4)(a). As to supervision requirements see PARA 282.
- 13 As to curfew requirements see PARA 275.
- 14 le if required by the Criminal Justice and Immigration Act 2008 Sch 1 para 2 (see PARA 203).
- 15 Criminal Justice and Immigration Act 2008 Sch 1 para 3(4)(b). As to electronic monitoring requirements see PARA 203.
- 16 And other requirements in accordance with the Criminal Justice and Immigration Act 2008 Sch 1 para 3(4) (see the text and notes 12-15).
- 17 le whether or not the order also imposes any other requirement mentioned in the Criminal Justice and Immigration Act 2008 s 1(1) (see PARA 202).
- 18 Criminal Justice and Immigration Act 2008 s 1(3)(a), Sch 1 para 3(5). Subject to Sch 1 para 30(2) (see PARA 208) a youth rehabilitation order takes effect on the day on which the order is made (Sch 1 para 30(1) (amended by the Coroners and Justice Act 2009 Sch 23 Pt 9)), although if the court makes two or more youth rehabilitation orders with intensive supervision and surveillance both or all of the orders must take effect at the same time (in accordance with the Criminal Justice and Immigration Act 2008 Sch 1 para 30(1) or (2)) (Sch 1 para 31(3)). As to concurrent and consecutive orders see PARA 209.

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205. Youth rehabilitation orders with fostering.

The court may make a youth rehabilitation order¹ which imposes a fostering requirement² if:

- 674 (1) the court is dealing with an offender for an offence which is punishable with imprisonment³;
- 675 (2) the court is of the opinion that the offence, or the combination of the offence and one or more offences associated⁴ with it, was so serious that⁵ a custodial sentence⁶ would be⁷ appropriate⁸;
- 676 (3) the offender was aged under 15 at the time of conviction, the court is of the opinion that the offender is a persistent offender⁹;
- 677 (4) the court is satisfied that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living¹⁰; and
- 678 (5) the court is satisfied that the imposition of a fostering requirement would assist in the offender's rehabilitation¹¹.

A youth rehabilitation order which imposes a fostering requirement must also impose a supervision requirement¹². However, a court may not impose a fostering requirement unless it has consulted the offender's parents or guardians¹³ (where it is not impracticable to do so)¹⁴ and the local authority¹⁵ which is to place the offender with a local authority foster parent¹⁶.

A youth rehabilitation order which imposes a fostering requirement is known as a 'youth rehabilitation order with fostering'¹⁷.

1 In accordance with the Criminal Justice and Immigration Act 2008 s 1 (see PARAS 202-204). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. The power to make a youth rehabilitation order is subject to the Criminal Justice Act 2003 ss 148, 150 (restrictions on community sentences etc: see PARAS 164, 166) and the provisions of the Criminal Justice and Immigration Act 2008 Sch 1 Pts 1, 3 (see PARAS 204-205, 208-209): s 1(6).

2 As to fostering requirements see the Criminal Justice and Immigration Act 2008 Sch 1 para 18; and PARA 302. A youth rehabilitation order with intensive supervision and surveillance (see PARA 204) may not impose a fostering requirement: Sch 1 para 5(1). These provisions have effect subject in particular to Sch 1 paras 18(7), 19 (pre-conditions to imposing fostering requirement: see PARA 302): Sch 1 para 4(5).

3 Criminal Justice and Immigration Act 2008 s 1(4)(a). As to offences punishable with imprisonment see PARA 204 note 1.

4 As to an 'associated' offence see PARA 204 note 2.

5 In but for the Criminal Justice and Immigration Act 2008 Sch 1 para 3 or 4 (see the text and notes 10-17; and PARA 204).

6 As to custodial sentences see PARA 204 note 4.

7 Or, if the offender was aged under 12 at the time of conviction, would be if the offender had been aged 12: Criminal Justice and Immigration Act 2008 s 1(4)(b).

8 Criminal Justice and Immigration Act 2008 s 1(4)(b).

9 Criminal Justice and Immigration Act 2008 s 1(4)(c). As to the age of an offender for sentencing purposes see PARAS 27, 202 note 1.

10 Criminal Justice and Immigration Act 2008 Sch 1 para 4(1), (2)(a).

11 Criminal Justice and Immigration Act 2008 Sch 1 para 4(2)(b).

12 Criminal Justice and Immigration Act 2008 Sch 1 para 4(4). As to supervision requirements see PARA 282.

13 As to an offender's parent or guardian see PARA 202 note 3.

14 Criminal Justice and Immigration Act 2008 Sch 1 para 4(3)(a).

15 As to local authorities see PARA 202 note 3.

16 Criminal Justice and Immigration Act 2008 Sch 1 para 4(3)(b).

17 If whatever other requirements mentioned in the Criminal Justice and Immigration Act 2008 s 1(1) or (2) (see PARAS 202, 203) it imposes: s 1(3)(b), Sch 1 para 4(6). Subject to Sch 1 para 30(2) (see PARA 208) a youth rehabilitation order takes effect on the day after the day on which the order is made (Sch 1 para 30(1)), although if the court makes two or more youth rehabilitation orders with fostering both or all of the orders must take effect at the same time (in accordance with Sch 1 para 30(1) or (2)) (Sch 1 para 31(3)). As to concurrent and consecutive orders see PARA 209.

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206. Persistent offenders.

Provision is made for a youth rehabilitation order to be made in respect of a persistent offender¹.

Where:

- 679 (1) a person aged 16 or 17 is convicted of an offence (the 'current offence')²;
- 680 (2) until a day to be appointed³, on three or more previous occasions he has, on conviction by a court in the United Kingdom⁴ of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine, or, as from that day, on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16 or by a court in another member state of a relevant offence so committed⁵;
- 681 (3) the court would not⁶ otherwise regard the current offence, or the combination of the current offence and one or more offences associated⁷ with it, as being serious enough to warrant a youth rehabilitation order⁸,

the court may make a youth rehabilitation order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances⁹, it would be in the interests of justice to make such an order¹⁰.

1 See the Criminal Justice Act 2003 s 151. At the date at which this volume states the law no day had been appointed for the commencement of s 151. A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

2 Criminal Justice Act 2003 s 151(2A)(a) (s 151(2A), (2B) added, s 151(3)-(6) amended, by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 76). As to the age of an offender for sentencing purposes see PARAS 27, 202 note 1.

3 See note 5.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2. References to a conviction by a court in the United Kingdom include references to the finding of guilt in service disciplinary proceedings: see the Criminal Justice Act 2003 s 151(4), (5), (8); and PARA 170 note 6.

5 Criminal Justice Act 2003 s 151(2A)(b) (as added (see note 2); s 151(1)(b) prospectively substituted by the Coroners and Justice Act 2009 Sch 17 para 8(14)). At the date at which this volume states the law no day had been appointed for the coming into force of the amendment made by the Coroners and Justice Act 2009. For these purposes, it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine: Criminal Justice Act 2003 s 151(6) (as so amended). As to a 'relevant' offence for these purposes see s 151(4A); and PARA 170 note 7.

6 In despite the effect of the Criminal Justice Act 2003 s 143(2) (see PARA 618). Section 151 does not limit the extent to which a court may, in accordance with s 143(2), treat any previous convictions of the offender as increasing the seriousness of an offence: s 151(7).

7 As to an 'associated offence' see PARA 19 note 9.

8 Criminal Justice Act 2003 s 151(2A)(c) (as added: see note 2).

9 le including the nature of the offences to which the previous convictions mentioned in the Criminal Justice Act 2003 s 151(2A)(b) (see the text and note 5) relate and their relevance to the current offence and the time that has elapsed since the offender's conviction of each of those offences: s 151(3) (as amended: see note 2).

10 Criminal Justice Act 2003 s 151(2B) (as added: see note 2).

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207. Matters which the court must consider.

Before making a youth rehabilitation order¹ the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances².

Before making a youth rehabilitation order imposing two or more requirements³ or two or more youth rehabilitation orders in respect of associated offences⁴, the court must⁵ consider whether, in the circumstances of the case, the requirements to be imposed by the order or orders are compatible with each other⁶. The court must also ensure, as far as practicable, that any requirement imposed by a youth rehabilitation order is such as to avoid:

- 682 (1) any conflict with the offender's religious beliefs⁷;
- 683 (2) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment⁸; and
- 684 (3) any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject⁹.

The Secretary of State may by order make provision for additional restrictions on the making of a youth rehabilitation order¹⁰.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 1 para 28.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 29(1)(a). As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq.

4 Criminal Justice and Immigration Act 2008 Sch 1 para 29(1)(b). As to an 'associated' offence see PARA 204 note 2.

5 In subject to the Criminal Justice and Immigration Act 2008 Sch 1 paras 2, 3(4), 4(4) (see PARAS 203-205): Criminal Justice and Immigration Act 2008 Sch 1 para 29(2).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 29(1).

7 Criminal Justice and Immigration Act 2008 Sch 1 para 29(3)(a).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 29(3)(b).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 29(3)(c).

10 Criminal Justice and Immigration Act 2008 Sch 1 para 29(4). At the date at which this volume states the law no such order had been made.

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208. Operation in conjunction with other orders.

If a detention and training order¹ is in force in respect of an offender a court making a youth rehabilitation order² in respect of that offender may order that it is to take effect³:

- 685 (1) when the period of supervision begins⁴ in relation to the detention and training order⁵; or
- 686 (2) on the expiry of the term of the detention and training order⁶.

A court must not make a youth rehabilitation order in respect of an offender at a time when another youth rehabilitation order⁷ or a reparation order⁸ is in force in respect of the offender, unless when it makes the order it revokes the earlier order⁹.

1 References to a detention and training order include an order made under the Armed Forces Act 2006 s 212 (detention and training orders made by service courts: see **ARMED FORCES**): Criminal Justice and Immigration Act 2008 Sch 1 para 30(3)(a).

2 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

3 Ie instead of taking effect on the day after the day on which the order was made: see the Criminal Justice and Immigration Act 2008 Sch 1 para 30(1); and PARA 202 note 3.

4 Ie in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 103(1)(a) (see PARA 92). The reference to s 103(1)(a) includes that provision as applied by the Armed Forces Act 2006 s 213(1) (see **ARMED FORCES**): Criminal Justice and Immigration Act 2008 Sch 1 para 30(3)(b).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 30(2)(a).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 30(2)(b).

7 Criminal Justice and Immigration Act 2008 Sch 1 para 30(4)(a).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 30(4)(b). A 'reparation order' is an order made under the Powers of Criminal Courts (Sentencing) Act 2000 a 73(1) (see PARA 384).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 30(4). Where the earlier order is revoked under Sch 1 para 30(4), Sch 2 para 24 (provision of copies of orders: see PARAS 208, 384) applies to the revocation as it applies to the revocation of a youth rehabilitation order: Sch 1 para 30(5).

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209. Concurrent and consecutive orders.

Where the court is dealing with an offender who has been convicted of two or more associated¹ offences and in respect of one of the offences makes:

- 687 (1) a youth rehabilitation order² with intensive supervision and surveillance³;
- 688 (2) a youth rehabilitation order with fostering⁴; or
- 689 (3) any other youth rehabilitation order⁵,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences⁶.

Where the court includes requirements of the same kind⁷ in two or more youth rehabilitation orders it must direct, in relation to each requirement of that kind, whether:

- 690 (a) it is to be concurrent with the other requirement or requirements of that kind, or any of them⁸; or
- 691 (b) it and the other requirement or requirements of that kind, or any of them, are to be consecutive⁹.

1 As to associated offences see PARA 204 note 2.

2 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 31(1), (2)(a). As to the meaning of 'youth rehabilitation order with intensive supervision and surveillance' see PARA 204.

4 Criminal Justice and Immigration Act 2008 Sch 1 para 31(2)(b). As to the meaning of 'youth rehabilitation order with fostering' see PARA 205.

5 Criminal Justice and Immigration Act 2008 Sch 1 para 31(2)(c).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 31(2).

7 As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq. For the purposes of the Criminal Justice and Immigration Act 2008 Sch 1 para 31(4), (6), requirements are of the same kind if they fall within the same paragraph of Sch 1 Pt 2 (see PARA 202 et seq): Sch 1 para 31(7).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 31(4)(a).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 31(4)(b). The court may not direct that two or more fostering requirements are to be consecutive: Sch 1 para 31(5). As to fostering requirements see Sch 1 para 18; and PARA 302. Where the court directs that two or more requirements of the same kind (see note 7) are to be consecutive:

182 (1) the number of hours, days or months specified in relation to one of them is additional to the number of hours, days, or months specified in relation to the other or others (Sch 1 para 31(6)(a)); but

- 183 (2) the aggregate number of hours, days or months specified in relation to both or all of them must not exceed the maximum number which may be specified in relation to any one of them (Sch 1 para 31(6)(b)).

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210. Time limits for compliance with requirements.

A youth rehabilitation order¹ must specify a date, not more than three years after the date on which the order takes effect, by which all the requirements² in it must have been complied with³. A youth rehabilitation order which imposes two or more different requirements⁴ may also specify an earlier date or dates in relation to compliance with any one or more of them⁵.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

2 As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 32(1). In the case of a youth rehabilitation order with intensive supervision and surveillance (see PARA 204), the date specified for these purposes must not be earlier than six months after the date on which the order takes effect: Sch 1 para 32(3).

4 Ie two or more different requirements falling within the Criminal Justice and Immigration Act 2008 Sch 1 Pt 2 (see PARA 202 et seq).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 32(2).

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211. Periodical review of orders.

The Secretary of State may by order:

- 692 (1) enable or require a court making a youth rehabilitation order¹ to provide for the order to be reviewed periodically by that or another court²;
- 693 (2) enable a court to amend a youth rehabilitation order so as to include or remove a provision for review by a court³; and
- 694 (3) make provision as to the timing and conduct of reviews and as to the powers of the court on a review⁴.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 1 para 35(1)(a). At the date at which this volume states the law no such order had been made. Such an order may, in particular, make provision in relation to community orders corresponding to any provision made by the Criminal Justice Act 2003 ss 191, 192 (see PARA 115) in relation to suspended sentence orders (Criminal Justice and Immigration Act 2008 Sch 1 para 35(2)) and may repeal or amend any provision of the Criminal Justice Act 2003 Pt 12 Ch 1 (ss 142-176) (Criminal Justice and Immigration Act 2008 Sch 1 para 35(3)).

3 Criminal Justice and Immigration Act 2008 Sch 1 para 35(1)(b). See note 2.

4 Criminal Justice and Immigration Act 2008 Sch 1 para 35(1)(c). See note 2.

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B. BREACH OF REQUIREMENT OF YOUTH REHABILITATION ORDER

212. Duty to give warning and subsequent breach.

If the responsible officer¹ is of the opinion that the offender² has failed without reasonable excuse to comply with a youth rehabilitation order³, the officer must give him a warning unless⁴ the officer causes an information to be laid before a justice of the peace in respect of the failure⁵. The warning must:

- 695 (1) describe the circumstances of the failure⁶;
 - 696 (2) state that the failure is unacceptable⁷; and
 - 697 (3) state that the offender will be liable to be brought before a court:
- 19
- 52. (a) in a case where the warning is given during the warned period⁸ relating to a previous warning⁹, if during that period the offender again fails to comply with the order¹⁰; or
 - 53. (b) in any other case, if during the warned period relating to the warning, the offender fails on more than one occasion to comply with the order¹¹.
- 20

The responsible officer must, as soon as practicable after the warning has been given, record that fact¹².

If:

- 698 (i) the responsible officer has given such a warning (the 'first warning') to the offender in respect of a youth rehabilitation order¹³;
- 699 (ii) during the warned period relating to the first warning, has given another warning¹⁴ to the offender in respect of a failure to comply with the order¹⁵; and
- 700 (iii) is of the opinion that during the warned period relating to the first warning the offender has again failed without reasonable excuse to comply with the order¹⁶,

the officer must cause an information to be laid before a justice of the peace in respect of the failure in question¹⁷ unless he is of the opinion that there are exceptional circumstances which justify not causing an information to be so laid¹⁸.

If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order¹⁹ and the above provisions²⁰ do not apply²¹, the responsible officer may cause an information to be laid before a justice of the peace in respect of that failure²².

1 For the purposes of the Criminal Justice and Immigration Act 2008 Pt 1 'responsible officer', in relation to an offender to whom a youth rehabilitation order relates, means:

184 (1) in a case where the order imposes a curfew requirement (see PARA 275) or an exclusion requirement (see PARA 276) but no other requirement mentioned in s 1(1) (see PARA 202), and imposes an electronic monitoring requirement (see PARAS 203, 230), the person who under Sch 1

para 26(4) (see PARA 299) is responsible for the electronic monitoring required by the order (s 4(1)(a));

185 (2) in a case where the only requirement imposed by the order is an attendance centre requirement (see PARA 300), the officer in charge of the attendance centre in question (s 4(1)(b)); and

186 (3) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by Pt 1 on the responsible officer (s 4(1)(c)).

For this purpose 'qualifying officer', in relation to a youth rehabilitation order, means:

187 (a) a member of a youth offending team established by a local authority for the time being specified in the order for these purposes (s 4(2)(a)); or

188 (b) an officer of a local probation board appointed for or assigned to the local justice area for the time being so specified or (as the case may be) an officer of a provider of probation services acting in the local justice area for the time being so specified (s 4(2)(b)).

The Secretary of State may by order amend s 4(1), (2), and make any other amendments of Pt 1 or the Criminal Justice Act 2003 Pt 12 Ch 1 (ss 142-176) (general provisions about sentencing) that appear to be necessary or expedient in consequence of any amendment of the Criminal Justice and Immigration Act 2008 s 4(1), (2); s 4(3). Such an order may, in particular, provide for the court to determine which of two or more descriptions of responsible officer is to apply in relation to any youth rehabilitation order: s 4(4).

A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq. As to the meaning of 'local authority' see PARA 202 note 3. As to the meaning of 'local probation board' see PARA 202 note 3. As to local probation boards and providers of probation services see PARA 733 et seq.

2 The 'offender' is the person in respect of whom a youth rehabilitation order is made: Criminal Justice and Immigration Act 2008 Sch 2 para 1(1).

3 Any reference in the Criminal Justice and Immigration Act 2008 Sch 2 (however expressed) to an offender's compliance with a youth rehabilitation order is a reference to the offender's compliance with the requirement or requirements imposed by the order and, if the order imposes an attendance centre requirement (see PARA 283), rules made under the Criminal Justice Act 2003 s 222(1)(d) or (e) (attendance centre rules: see PARA 285): Criminal Justice and Immigration Act 2008 Sch 2 para 1(2)(a). Any reference (however expressed) to the offender's failure to comply with the order is a reference to any failure of the offender to comply with a requirement imposed by the order or, if the order imposes an attendance centre requirement, with attendance centre rules: Sch 2 para 1(2)(b).

4 Ie under the Criminal Justice and Immigration Act 2008 Sch 2 para 4(1), (3) (see PARA 213).

5 Criminal Justice and Immigration Act 2008 Sch 2 para 3(1).

6 Criminal Justice and Immigration Act 2008 Sch 2 para 3(2)(a).

7 Criminal Justice and Immigration Act 2008 Sch 2 para 3(2)(b).

8 'Warned period', in relation to a warning under the Criminal Justice and Immigration Act 2008 Sch 2 para 3, means the period of 12 months beginning with the date on which the warning was given: Sch 2 paras 3(3), 4(4).

9 Ie a previous warning under the Criminal Justice and Immigration Act 2008 Sch 2 para 3.

10 Criminal Justice and Immigration Act 2008 Sch 2 para 3(2)(c)(i).

11 Criminal Justice and Immigration Act 2008 Sch 2 para 3(2)(c)(ii).

12 Criminal Justice and Immigration Act 2008 Sch 2 para 3(3).

13 Criminal Justice and Immigration Act 2008 Sch 2 para 4(1)(a).

14 Ie under the Criminal Justice and Immigration Act 2008 Sch 2 para 3.

15 Criminal Justice and Immigration Act 2008 Sch 2 para 4(1)(b).

- 16 Criminal Justice and Immigration Act 2008 Sch 2 para 4(1)(c).
- 17 Criminal Justice and Immigration Act 2008 Sch 2 para 4(1).
- 18 Criminal Justice and Immigration Act 2008 Sch 2 para 4(2).
- 19 Criminal Justice and Immigration Act 2008 Sch 2 para 4(3)(a).
- 20 In the Criminal Justice and Immigration Act 2008 Sch 2 para 4(1) (see the text and notes 14-18), in a case not within Sch 2 para 4(2) (see the text and note 19).
- 21 Criminal Justice and Immigration Act 2008 Sch 2 para 4(3)(b).
- 22 Criminal Justice and Immigration Act 2008 Sch 2 para 4(3).

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213. Issue of summons or warrant.

If at any time while a youth rehabilitation order¹ is in force it appears on information to a justice of the peace that the offender² has failed to comply with such an order, the justice may issue a summons requiring the offender to appear at the place and time specified in it³ or, if the information is in writing and on oath, issue a warrant for his arrest⁴. Any such summons or warrant must direct the offender to appear or be brought:

- 701 (1) if the youth rehabilitation order was made by the Crown Court and does not include a direction⁵ in relation to further proceedings, before the Crown Court⁶; and
- 702 (2) in any other case, before the appropriate court⁷.

If the offender does not appear in answer to a summons so issued which required the offender to appear before the Crown Court, the Crown Court may⁸ issue a further summons requiring the offender to appear at the place and time specified in it⁹ or (in any case) issue a warrant for the arrest of the offender¹⁰. If the offender does not appear in answer to a summons so issued which required the offender to appear before a magistrates' court, the magistrates' court may issue a warrant for the arrest of the offender¹¹.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq.

2 As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 5(1)(a).

4 Criminal Justice and Immigration Act 2008 Sch 2 para 5(1)(b).

Where an offender is arrested in pursuance of a warrant issued by virtue of Sch 2 and cannot be brought immediately before the court before which the warrant directs the offender to be brought (the 'relevant court'), the person in whose custody the offender is:

189 (1) may make arrangements for the offender's detention in a place of safety for a period of not more than 72 hours from the time of the arrest (Sch 2 para 21(1), (2)(a)); and

190 (2) must within that period bring the offender before a magistrates' court (Sch 2 para 21(2)(b)).

A person who is detained under arrangements made under Sch 2 para 21(2)(a) is deemed to be in legal custody: Sch 2 para 21(4). As to the meaning of 'place of safety' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 608 (definition applied by the Criminal Justice and Immigration Act 2008 Sch 2 para 21(5)). In the case of a warrant issued by the Crown Court, the Senior Courts Act 1981 s 81(5) (duty to bring person before magistrates' court: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1261) does not apply: Criminal Justice and Immigration Act 2008 Sch 2 para 21(3). As to the Senior Courts Act 1981 see PARA 36 note 18.

Provision is made where under Sch 2 para 21(2) the offender is brought before a court (the 'alternative court') which is not the relevant court: Sch 2 para 21(6). If the relevant court is a magistrates' court the alternative court may direct that the offender be released forthwith (Sch 2 para 21(7)(a)(i)) or remand the offender (Sch 2 para 21(7)(a)(ii)), and the Magistrates' Courts Act 1980 s 128 (remand in custody or on bail: see **MAGISTRATES** vol 29(2) (Reissue) PARA 716) is applied with specified modifications: see the Criminal Justice and Immigration Act 2008 Sch 2 para 21(7). If the relevant court is the Crown Court, the Magistrates' Courts Act 1980 s 43A

(functions of magistrates' court where a person in custody is brought before it with a view to appearance before the Crown Court: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1261) is applied with specified modifications: see the Criminal Justice and Immigration Act 2008 Sch 2 para 21(8). Any power to remand the offender in custody which is conferred by the Magistrates' Courts Act 1980 s 43A or s 128 is to be taken to be a power to remand the offender to accommodation provided by or on behalf of a local authority (if the offender is aged under 18) (Criminal Justice and Immigration Act 2008 Sch 2 para 21(9)(a)) and to remand the offender to a prison (in any other case) (Sch 2 para 21(9)(b)). Where the court remands the offender to accommodation provided by or on behalf of a local authority, the court must designate, as the authority which is to receive the offender, the local authority for the area in which it appears to the court that the offender resides: Sch 2 para 21(10)).

5 le a direction under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202).

6 Criminal Justice and Immigration Act 2008 Sch 2 para 5(2)(a).

7 Criminal Justice and Immigration Act 2008 Sch 2 para 5(2)(b). For this purpose 'appropriate court' means:

191 (1) if the offender is aged under 18, a youth court acting in the relevant local justice area (Sch 2 para 5(3)(a)); and

192 (2) if the offender is aged 18 or over, a magistrates' court (other than a youth court) acting in that local justice area (Sch 2 para 5(3)(b)).

'Relevant local justice area' means the local justice area in which the offender resides or if it is not known where the offender resides, the local justice area specified in the youth rehabilitation order: Sch 2 para 5(4). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

8 le unless the summons was issued under the Criminal Justice and Immigration Act 2008 Sch 2 para 5(6).

9 Criminal Justice and Immigration Act 2008 Sch 2 para 5(5), (6)(a).

10 Criminal Justice and Immigration Act 2008 Sch 2 para 5(6)(b).

11 Criminal Justice and Immigration Act 2008 Sch 2 para 5(7).

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214. Powers of magistrates' court.

If an offender¹ appears or is brought² before a youth court or other magistrates' court³ and it is proved⁴ to the satisfaction of the court that the offender has failed without reasonable excuse⁵ to comply with a youth rehabilitation order⁶, the court may deal with him in respect of the failure in any one of the following ways⁷:

- 703 (1) by ordering him to pay a fine⁸;
- 704 (2) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made in addition to, or in substitution for, any requirement or requirements already imposed by the order⁹; or
- 705 (3) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it)¹⁰.

Where a youth rehabilitation order was made by the Crown Court¹¹ and contains a direction in relation to further proceedings¹² and a youth court or other magistrates' court would otherwise¹³ be required, or has the power, to deal with the offender¹⁴, the court may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court¹⁵.

1 As to the meaning of 'offender' see PARA 212 note 2.

2 Ie under the Criminal Justice and Immigration Act 2008 Sch 2 para 5 (see PARA 213). A youth court or a magistrates' court may adjourn any hearing relating to an offender in any proceedings under Sch 2, and where it does so the court may direct that the offender be released forthwith or remand the offender: Sch 2 para 22(1), (2). Where the court so remands the offender it must fix the time and place at which the hearing is to be resumed and that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand, and where the court so adjourns the hearing but does not remand the offender it may fix the time and place at which the hearing is to be resumed but, if it does not do so, it must not resume the hearing unless it is satisfied that the offender, the responsible officer and, if the offender is aged under 14, a parent or guardian of the offender, have had adequate notice of the time and place for the resumed hearing: Sch 2 para 22(3), (4). These powers may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980: Sch 2 para 22(5). These provisions apply to any hearing in any proceedings under Sch 2 in place of the Magistrates' Courts Act 1980 s 10 (adjournment of trial: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 707, 711) where s 10 would otherwise apply, but do not affect the application of s 10 to hearings of any other description: Criminal Justice and Immigration Act 2008 Sch 2 para 22(6). As to the responsible officer see PARA 212 note 1. As to an offender's parent or guardian see PARA 202 note 3. As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 6(1)(a).

4 The prosecution must prove each element of the breach beyond reasonable doubt, including proving that the offender was the person named in the order: see *West Yorkshire Probation Board v Boulter* [2005] EWHC 2342 (Admin), 169 JP 601, [2006] 1 WLR 232 (decided in connection with the breach of a community order under the Criminal Justice Act 2003).

5 The fact that an appeal against sentence had been lodged could not afford a reasonable excuse to a defendant for failing to comply with the requirements of a community order: see *West Midlands Probation Board v Sutton Coldfield Magistrates' Court* [2008] EWHC 15 (Admin), [2008] 3 All ER 1193, sub nom *West Midlands Probation Board v Sadler* [2008] 1 WLR 918 (decided in connection with the breach of a community order under the Criminal Justice Act 2003).

6 Criminal Justice and Immigration Act 2008 Sch 2 para 6(1)(b). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. Where a youth rehabilitation order imposes a mental health treatment requirement (see PARA 278), a drug treatment requirement (see PARA 279) or an intoxicating substance treatment requirement (see PARA 297) in respect of an offender the offender is not to be treated for these purposes as having failed to comply with an order on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances: Sch 2 para 9.

7 In dealing with the offender under these provisions the court must take into account the extent to which the offender has complied with the youth rehabilitation order: Criminal Justice and Immigration Act 2008 Sch 2 para 6(4).

8 Criminal Justice and Immigration Act 2008 Sch 2 para 6(2)(a). The fine must not exceed £250 if the offender is aged under 14 (Sch 2 para 6(2)(a)(i)) or £1,000 in any other case (Sch 2 para 6(2)(a)(ii)). A fine so imposed is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction: Sch 2 para 6(5).

The Secretary of State may by order amend any sum for the time being specified in Sch 2 para 6(2)(a)(i) or (ii) or Sch 2 para 8(2)(a)(i) or (ii) (see PARA 215) if it appears to him that there has been a change in the value of money since the relevant date which justifies the change: Sch 2 para 10(1), (2). 'Relevant date' means:

- 193 (1) if the sum specified in Sch 2 para 6(2)(a)(i) or (ii) or Sch 2 para 8(2)(a)(i) or (ii) (as the case may be) has been substituted by an order under Sch 2 para 10(1), the date on which the sum was last so substituted (Sch 2 para 10(3)(a)); and
- 194 (2) otherwise, 8 May 2008 (ie the date on which the Criminal Justice and Immigration Act 2008 received the Royal Assent) (Sch 2 para 10(3)(b)).

An order under Sch 2 para 10(1) (a 'fine amendment order') must not have effect in relation to any youth rehabilitation order made in respect of an offence committed before the fine amendment order comes into force: Sch 2 para 10(4). At the date at which this volume states the law no such order had been made.

9 Criminal Justice and Immigration Act 2008 Sch 2 para 6(2)(b). Section 1(4), and the provisions mentioned in s 1(6) (see PARA 204) apply in relation to a power conferred by Sch 2 para 6(2)(b) to impose a requirement as they apply in relation to any power conferred by s 1 or Sch 1 paras 1-5 (see PARA 202 et seq) to make a youth rehabilitation order which includes such a requirement: Sch 2 para 23. As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq. Any requirement imposed under Sch 2 para 6(2)(b) must be capable of being complied with before the date specified under Sch 1 para 32(1) (see PARA 210): Sch 2 para 6(3), (6). The court may not under Sch 2 para 6(2)(b) impose an extended activity requirement (see PARA 204) or a fostering requirement (see PARA 302) if the order does not already impose such a requirement: Sch 2 para 6(8). See also Sch 2 para 6(7), (9), (10); and PARAS 218, 287, 302.

10 Criminal Justice and Immigration Act 2008 Sch 2 para 6(2)(c). Where the court deals with the offender under Sch 2 para 6(2)(c) it must revoke the youth rehabilitation order if it is still in force: Sch 2 para 6(11). An offender may appeal to the Crown Court against a sentence imposed under Sch 2 para 6(2)(c): Sch 2 para 6(16).

Where the court is dealing with the offender under Sch 2 para 6(2)(c) and the offender has wilfully and persistently failed to comply with a youth rehabilitation order (Sch 2 para 6(12)), the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in s 1(4)(a) or (b) (see PARA 204) (Sch 2 para 6(13)), and if the order is a youth rehabilitation order with intensive supervision and surveillance (see PARA 204) and the offence mentioned in Sch 2 para 6(2)(c) was punishable with imprisonment, the court may impose a custodial sentence notwithstanding anything in the Criminal Justice Act 2003 s 152(2) (general restrictions on imposing discretionary custodial sentences: see PARA 19) (Criminal Justice and Immigration Act 2008 Sch 2 para 6(14)). As to offences punishable with imprisonment see PARA 204 note 1.

If the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of Sch 2 para 6(13) and the offence mentioned in Sch 2 para 6(2)(c) was not punishable with imprisonment, for the purposes of dealing with the offender under Sch 2 para 6(2)(c) the court is to be taken to have had power to deal with the offender for that offence by making a detention and training order (see PARA 89) for a term not exceeding four months: Sch 2 para 6(15).

11 Where a youth rehabilitation order has been made on appeal it is to be treated:

- 195 (1) if it was made on an appeal from a magistrates' court, as having been made by a magistrates' court (Criminal Justice and Immigration Act 2008 Sch 2 para 2(a)); and

196 (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, as having been made by the Crown Court (Sch 2 para 2(b)).

12 le a direction under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202).

13 le apart from the Criminal Justice and Immigration Act 2008 Sch 2 para 7(1).

14 le in one of the ways mentioned in the Criminal Justice and Immigration Act 2008 Sch 2 para 6(2) (see the text and notes 7-10).

15 Criminal Justice and Immigration Act 2008 Sch 2 para 7(1), (2). A court which deals with an offender's case under these provisions must send to the Crown Court: (1) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation order in the respect specified in the certificate (Sch 2 para 7(3)(a)); and (2) such other particulars of the case as may be desirable (Sch 2 para 7(3)(b)); and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court (Sch 2 para 7(3)).

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215. Powers of Crown Court.

If an offender¹ appears or is brought² before the Crown Court³ and it is proved⁴ to the satisfaction of the court that the offender has failed without reasonable excuse⁵ to comply with a youth rehabilitation order⁶, the Crown Court may deal with him in respect of the failure in any one of the following ways⁷:

- 706 (1) by ordering him to pay a fine⁸;
- 707 (2) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made in addition to, or in substitution for, any requirement or requirements already imposed by the order⁹; or
- 708 (3) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence¹⁰.

1 As to the meaning of 'offender' see PARA 212 note 2.

2 Ie under the Criminal Justice and Immigration Act 2008 Sch 2 para 5 (see PARA 213) or by virtue of Sch 2 para 7(2) (see PARA 214).

3 Criminal Justice and Immigration Act 2008 Sch 2 para 8(1)(a).

4 See PARA 214 note 4.

5 See PARA 214 note 5.

6 Criminal Justice and Immigration Act 2008 Sch 2 para 8(1)(b). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. Where a youth rehabilitation order imposes a mental health treatment requirement (see PARA 278), a drug treatment requirement (see PARA 295) or an intoxicating substance treatment requirement (see PARA 297) in respect of an offender the offender is not to be treated for these purposes as having failed to comply with an order on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances: Sch 2 para 9.

7 In proceedings before the Crown Court under these provisions any question whether the offender has failed to comply with the youth rehabilitation order is to be determined by the court and not by the verdict of a jury: Criminal Justice and Immigration Act 2008 Sch 2 para 8(15). In dealing with the offender under these provisions the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order: Sch 2 para 8(4).

8 Criminal Justice and Immigration Act 2008 Sch 2 para 8(2)(a). The fine must not exceed £250 if the offender is aged under 14 (Sch 2 para 8(2)(a)(i)) or £1,000 in any other case (Sch 2 para 8(2)(a)(ii)). As to the amendment of these sums see PARA 214 note 8. A fine so imposed is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction: Sch 2 para 8(5).

9 Criminal Justice and Immigration Act 2008 Sch 2 para 8(2)(b). Section 1(4), and the provisions mentioned in s 1(6) (see PARA 205) apply in relation to a power conferred by Sch 2 para 8(2)(b) to impose a requirement as they apply in relation to any power conferred by s 1 or Sch 1 paras 1-5 (see PARA 202 et seq) to make a youth rehabilitation order which includes such a requirement: Sch 2 para 23. As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq. Any requirement imposed under Sch 2 para 8(2)(b) must be capable of being complied with before the date specified under Sch 1 para 32(1) (see PARA 210): Sch 2

para 8(3), (6). The court may not under Sch 2 para 8(2)(b) impose an extended activity requirement (see PARA 204) or a fostering requirement (see PARA 302) if the order does not already impose such a requirement: Sch 2 para 8(8). See also Sch 2 para 8(7), (9); and PARAS 287, 302.

10 Criminal Justice and Immigration Act 2008 Sch 2 para 8(2)(c). Where the court deals with the offender under Sch 2 para 8(2)(c) it must revoke the youth rehabilitation order if it is still in force: Sch 2 para 8(10).

Where the Crown Court is dealing with the offender under Sch 2 para 8(2)(c) and the offender has wilfully and persistently failed to comply with a youth rehabilitation order (Sch 2 para 8(11)), the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in s 1(4)(a) or (b) (see PARA 204) (Sch 2 para 8(12)), and if the order is a youth rehabilitation order with intensive supervision and surveillance (see PARA 204) and the offence mentioned in Sch 2 para 8(2)(c) was punishable with imprisonment, the court may impose a custodial sentence notwithstanding anything in the Criminal Justice Act 2003 s 152(2) (general restrictions on imposing discretionary custodial sentences: see PARA 19) (Criminal Justice and Immigration Act 2008 Sch 2 para 8(13)). As to offences punishable with imprisonment see PARA 204 note 1.

If the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of Sch 2 para 6(13) (see PARA 214) or Sch 2 para 8(12) and the offence mentioned in Sch 2 para 8(2)(c) was not punishable with imprisonment, for the purposes of dealing with the offender under Sch 2 para 8(2)(c) the court is to be taken to have had power to deal with the offender for that offence by making a detention and training order (see PARA 89) for a term not exceeding four months: Sch 2 para 8(14).

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C. REVOCATION AND AMENDMENT OF YOUTH REHABILITATION ORDER

216. Revocation of order by magistrates' court or youth court.

Where a youth rehabilitation order¹ is in force in respect of an offender² and, on the application of the offender or the responsible officer³, it appears to the appropriate court⁴ that, having regard to circumstances which have arisen subsequent to the order, it would be in the interests of justice for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made, the appropriate court may:

- 709 (1) revoke the order⁵; or
- 710 (2) both revoke the order⁶ and deal with the offender, for that offence⁷, in any way in which the appropriate court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it)⁸.

The circumstances in which a youth rehabilitation order may be so revoked include the offender's making good progress or his responding satisfactorily to supervision or treatment⁹.

1 Is a youth rehabilitation order made by a youth court or other magistrates' court, or made by the Crown Court and containing a direction under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202 note 3): Sch 2 para 11(1)(b). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11. As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 2 para 11(1)(a). As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 11(1)(c). As to the meaning of 'responsible officer' see PARA 212 note 1. Where, otherwise than on the application of the offender, a court proposes to exercise its powers under any of Sch 2 paras 11-19, the court must summon the offender to appear before the court (Sch 2 para 20(1)(a)) and if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest (Sch 2 para 20(1)(b)). These provisions do not, however, apply where a court proposes to make an order revoking a youth rehabilitation order (Sch 2 para 20(2)(a)), cancelling, or reducing the duration of, a requirement of a youth rehabilitation order (Sch 2 para 20(2)(b)), or substituting a new local justice area or place for one specified in a youth rehabilitation order (Sch 2 para 20(2)(c)). See further Sch 2 para 21; and PARA 213 note 4.

If an application under these provisions relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the appropriate court: Sch 2 para 11(7). No application may be made under these provisions while an appeal against the community order is pending: Sch 2 para 11(6).

4 For these purposes 'appropriate court' means:

- 197 (1) if the offender is aged under 18 when the application under the Criminal Justice and Immigration Act 2008 Sch 2 para 11(1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order (Sch 2 para 11(8)(a)); and
- 198 (2) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area (Sch 2 para 11(8)(b)).

- 5 Criminal Justice and Immigration Act 2008 Sch 2 para 11(2)(a).
- 6 Criminal Justice and Immigration Act 2008 Sch 2 para 11(2)(b)(i). In dealing with an offender under Sch 2 para 11(2)(b) the court must take into account the extent to which the offender has complied with the youth rehabilitation order: Sch 2 para 11(4). A person sentenced under Sch 2 para 11(2)(b) for an offence may appeal to the Crown Court against the sentence: Sch 2 para 11(5).
- 7 le the offence in respect of which the order was made.
- 8 Criminal Justice and Immigration Act 2008 Sch 2 para 11(2)(b)(ii). See note 6.
- 9 Criminal Justice and Immigration Act 2008 Sch 2 para 11(3).

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217. Revocation of order by Crown Court.

Where a youth rehabilitation order¹ is in force in respect of an offender² and, on the application of the offender or the responsible officer³, it appears to the Crown Court that, having regard to circumstances which have arisen subsequent to the order, it would be in the interests of justice for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made, the Crown Court may:

- 711 (1) revoke the order⁴; or
- 712 (2) both revoke the order⁵ and deal with the offender, for that offence⁶, in any way in which the Crown Court could have dealt with the offender for that offence⁷.

The circumstances in which a youth rehabilitation order may be so revoked include the offender's making good progress or his responding satisfactorily to supervision or treatment⁸.

1 A youth rehabilitation order made by a Crown Court and not containing a direction under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202 note 3); Sch 2 para 12(1)(b). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 Criminal Justice and Immigration Act 2008 Sch 2 para 12(1)(a). As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 12(1)(c). See further Sch 2 para 20; and PARA 216 note 3. As to the meaning of 'responsible officer' see PARA 212 note 1. If an application under these provisions relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the Crown Court: Sch 2 para 12(6). No application may be made under these provisions while an appeal against the community order is pending: Sch 2 para 12(5).

4 Criminal Justice and Immigration Act 2008 Sch 2 para 12(2)(a).

5 Criminal Justice and Immigration Act 2008 Sch 2 para 12(2)(b)(i). In dealing with an offender under Sch 2 para 12(2)(b) the court must take into account the extent to which the offender has complied with the youth rehabilitation order: Sch 2 para 12(4).

6 The offence in respect of which the order was made.

7 Criminal Justice and Immigration Act 2008 Sch 2 para 12(2)(b)(ii). See note 5.

8 Criminal Justice and Immigration Act 2008 Sch 2 para 12(3).

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218. Amendment by magistrates' court or youth court by reason of change of residence.

If a youth rehabilitation order¹ is in force in respect of an offender² and the appropriate court³ is satisfied that the offender proposes to reside, or is residing, in a local justice area (the 'new local justice area') other than the local justice area for the time being specified in the order, the appropriate court may, and on the application of the offender or the responsible officer⁴ must, amend the order by substituting the new local justice area for the area specified in the order⁵. The court may also by order amend the youth rehabilitation order by cancelling any of the requirements of the order⁶ or by replacing any of those requirements with a requirement of the same kind⁷ which could have been included in the order when it was made⁸.

1 le a youth rehabilitation order made by a youth court or other magistrates' court, or made by the Crown Court and containing a direction under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202 note 3): Sch 2 para 13(1)(b). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11. As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 2 para 13(1)(a). As to the meaning of 'offender' see PARA 212 note 2.

3 For these purposes 'appropriate court' means:

199 (1) if the offender is aged under 18 when the application under the Criminal Justice and Immigration Act 2008 Sch 2 para 13(1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order (Sch 2 para 13(6)(a)); and

200 (2) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area (Sch 2 para 13(6)(b)).

Where the court deals with the offender under Sch 2 para 6(2)(b) (see PARA 214) and it would not otherwise have the power to amend the youth rehabilitation order under Sch 2 para 13, Sch 2 para 13 has effect as if references in it to the appropriate court were references to the court which is dealing with the offender: Sch 2 para 6(10).

4 Criminal Justice and Immigration Act 2008 Sch 2 para 13(1)(c). See further Sch 2 para 20; and PARA 216 note 3. As to the meaning of 'responsible officer' see PARA 212 note 1.

5 Criminal Justice and Immigration Act 2008 Sch 2 para 13(2). A court may not under Sch 2 para 13(2) or Sch 2 para 14(2) (see PARA 219) amend a youth rehabilitation order which contains specific area requirements (ie a requirement contained in the order which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area specified in the order: Sch 2 paras 13(3), 14(3), 15(1)) unless, in accordance with Sch 2 para 13(4) or, as the case may be, Sch 2 para 14(4) (see PARA 219), it either cancels those requirements or substitutes for those requirements other requirements which can be complied with if the offender resides in the new local justice area mentioned in Sch 2 para 13(2) or (as the case may be) Sch 2 para 14(2): Sch 2 para 15(2). If the application under Sch 2 para 13(1)(c) or Sch 2 para 14(1)(c) was made by the responsible officer and the youth rehabilitation order contains specific area requirements the court must, unless it considers it inappropriate to do so, so exercise its powers under Sch 2 para 13(4) or, as the case may be, Sch 2 para 14(4) that it is not prevented by Sch 2 para 15(2) from amending the order under Sch 2 para 13(2) or, as the case may be, Sch 2 para 14(2): Sch 2 para 15(3). The court may not under Sch 2 para 13(2) or, as the case may be, Sch 2 para 14(2) amend a youth rehabilitation order imposing a programme requirement (see PARA 273) unless the court is satisfied that a programme which corresponds as nearly as practicable to the

programme specified in the order for the purposes of that requirement and is suitable for the offender is available in the new local justice area: Sch 2 para 15(4).

6 Criminal Justice and Immigration Act 2008 Sch 2 para 13(4)(a).

7 For the purposes of the Criminal Justice and Immigration Act 2008 Sch 2 a requirement falling within any of Sch 1 paras 6-27 (see PARA 202 et seq) is of the same kind as any other requirement falling within those provisions and an electronic monitoring requirement (see PARAS 203, 230) is a requirement of the same kind as any requirement falling within those provisions to which it relates: Sch 2 para 1(3).

8 Criminal Justice and Immigration Act 2008 Sch 2 para 13(4)(b). Section 1(4), and the provisions mentioned in s 1(6) (see PARA 204) apply in relation to a power conferred by Sch 2 para 13(4)(b) or Sch 2 para 14(4)(b) to impose a requirement as they apply in relation to any power conferred by s 1 or Sch 1 paras 1-5 (see PARA 202 et seq) to make a youth rehabilitation order which includes such a requirement: Sch 2 para 23. Any requirement imposed under Sch 2 para 13(4)(b) or Sch 2 para 14(4)(b) must be capable of being complied with before the date specified under Sch 1 para 32(1) (see PARA 210): Sch 2 para 16(1). Where a youth rehabilitation order imposes a fostering requirement (see PARAS 205, 302) (the 'original requirement'), and under Sch 2 para 13(4)(b) or Sch 2 para 14(4)(b) a court proposes to substitute a new fostering requirement (the 'substitute requirement') for the original requirement, Sch 1 para 18(2) (see PARA 302) applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date: Sch 2 para 16(2). The Secretary of State may by order amend Sch 2 para 16(2) by substituting for the specified period of 18 months or any other period which may be so specified by virtue of a previous order such other period as may be specified in the order: Sch 2 para 25. At the date at which this volume states the law no such order had been made.

The court may not under Sch 2 para 13(4) or Sch 2 para 14(4) impose a mental health treatment requirement (see PARA 278), a drug treatment requirement (see PARA 279) or a drug testing requirement (see PARA 296) unless the offender has expressed willingness to comply with the requirement: Sch 2 para 16(3). If an offender fails to express willingness to comply with a mental health treatment requirement, a drug treatment requirement or a drug testing requirement which the court proposes to impose under Sch 2 para 13(4) or Sch 2 para 14(4) the court may revoke the youth rehabilitation order (Sch 2 para 16(4)(a)) and deal with the offender, for the offence in respect of which the order was made, in any way in which that court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it) (Sch 2 para 16(4)(b)). In dealing with the offender under Sch 2 para 16(4)(b) the court must take into account the extent to which the offender has complied with the order: Sch 2 para 16(5).

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219. Amendment by Crown Court by reason of change of residence.

If a youth rehabilitation order¹ is in force in respect of an offender² and the Crown Court is satisfied that the offender proposes to reside, or is residing, in a local justice area (the 'new local justice area') other than the local justice area for the time being specified in the order, the Crown Court may, and on the application of the offender or the responsible officer³ must, amend the order by substituting the new local justice area for the area specified in the order⁴. The Crown Court may also by order amend the youth rehabilitation order by cancelling any of the requirements of the order⁵ or by replacing any of those requirements with a requirement of the same kind⁶ which could have been included in the order when it was made⁷.

1 Is a youth rehabilitation order made by a Crown Court and not containing a direction under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202 note 3): Sch 2 para 14(1)(b). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 Criminal Justice and Immigration Act 2008 Sch 2 para 14(1)(a). As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 14(1)(c). See further Sch 2 para 20; and PARA 216 note 3. As to the meaning of 'responsible officer' see PARA 212 note 1.

4 Criminal Justice and Immigration Act 2008 Sch 2 para 14(2). In connection with this power to amend the order see Sch 2 para 15; and PARA 218 note 5.

5 Criminal Justice and Immigration Act 2008 Sch 2 para 14(4)(a).

6 As to when a requirement is of the same kind as another requirement see PARA 218 note 7.

7 Criminal Justice and Immigration Act 2008 Sch 2 para 14(4)(b). In connection with this power to amend the order see Sch 2 para 16; and PARA 218 note 8.

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220. Extension of unpaid work requirement.

Where:

- 713 (1) a youth rehabilitation order¹ imposing an unpaid work requirement² is in force in respect of any offender³; and
714 (2) on the application of the offender or the responsible officer⁴, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made⁵,

the court may, in relation to the order, extend the specified⁶ period of 12 months⁷.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 See PARA 271.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 17(a). As to the meaning of 'offender' see PARA 212 note 2.

4 As to the meaning of 'responsible officer' see PARA 212 note 1. See further Sch 2 para 20; and PARA 216 note 3.

5 Criminal Justice and Immigration Act 2008 Sch 2 para 17(b).

6 As specified by the Criminal Justice and Immigration Act 2008 Sch 1 para 10(6) (see PARA 287).

7 Criminal Justice and Immigration Act 2008 Sch 2 para 17.

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221. Supplementary.

On the making¹ of an order revoking or amending a youth rehabilitation order², the proper officer³ of the court must:

- 715 (1) provide copies of the revoking or amending order to the offender⁴ and, if the offender is aged under 14⁵, to the offender's parent or guardian⁶;
- 716 (2) provide a copy of the revoking or amending order to the responsible officer⁷;
- 717 (3) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to:
 - 21 54. (a) the local probation board acting for that area (or, as the case may be, a provider of probation services operating in that area)⁸; and
 - 55. (b) the magistrates' court acting in that area⁹; and
- 22 718 (4) in the case of an amending order which imposes or cancels a specified requirement¹⁰, provide a copy of so much of the amending order as relates to that requirement to the person specified¹¹ in relation to that requirement¹²;
- 719 (5) in the case of an order which revokes a specified requirement¹³, provide a copy of the revoking order as relates to that requirement to the person specified¹⁴ in relation to that requirement¹⁵; and
- 720 (6) where the court is a magistrates' court acting in a local justice area other than the one specified in the youth rehabilitation order, provide a copy of the revoking or amending order to a magistrates' court acting in the area so specified¹⁶.

1 In the Criminal Justice and Immigration Act 2008 Sch 2.

2 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

3 In relation to a magistrates' court, the designated officer for the court (Criminal Justice and Immigration Act 2008 Sch 2 para 24(3)(a)); and in relation to the Crown Court, the appropriate officer (Sch 2 para 24(3)(b)).

4 As to the meaning of 'offender' see PARA 212 note 2.

5 As to the age of an offender for sentencing purposes see PARAS 27, 202 note 1.

6 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(a). As to an offender's parent or guardian see PARA 202 note 3.

7 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(b). As to the meaning of 'responsible officer' see PARA 212 note 1.

8 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(c)(i). As to local probation boards and providers of probation services see PARA 733 et seq.

9 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(c)(ii). Where the proper officer of the court so provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court documents and information relating to the case likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order: Sch 2 para 24(2).

10 le specified in the first column of the Criminal Justice and Immigration Act 2008 Sch 1 para 34(4): see
PARA 202.

11 le specified in the second column of the Criminal Justice and Immigration Act 2008 Sch 1 para 34(4): see
PARA 202.

12 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(d).

13 See note 10.

14 See note 11.

15 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(e).

16 Criminal Justice and Immigration Act 2008 Sch 2 para 24(1)(f).

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D. SUBSEQUENT CONVICTIONS

222. Powers of magistrates' courts.

Where a youth rehabilitation order¹ is in force in respect of an offender², the offender is convicted of an offence (the 'further offence') by a youth court or other magistrates' court (the 'convicting court')³, and the convicting court is dealing with the offender for the further offence⁴, the convicting court may, if it considers that it would be in the interests of justice to do so having regard to circumstances which have arisen since the youth rehabilitation order was made⁵, revoke the order⁶ and deal with the offender, for the offence in respect of which the order was made, in any way in which it could have dealt with the offender for that offence had the offender been before that court to be dealt with for the offence⁷. In so dealing with an offender the sentencing court must take into account the extent to which the offender has complied with the order⁸.

If the order was made by the Crown Court and contains a direction⁹ in relation to further proceedings¹⁰, and the convicting court would otherwise¹¹ deal with the offender for the further offence¹², the convicting court may, instead of revoking the order¹³, commit the offender in custody or release him on bail until he can be brought before the Crown Court¹⁴. If the order was made by the Crown Court and does not contain a direction¹⁵ in relation to further proceedings¹⁶ the convicting court may commit the offender in custody or release him on bail until he can be brought before the Crown Court¹⁷.

1 Is a youth rehabilitation order made by a youth court or other magistrates' court, or made by the Crown Court and containing a direction in relation to further proceedings under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202 note 3): Sch 2 para 18(2)(a). A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11. As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

2 As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 18(1).

4 Criminal Justice and Immigration Act 2008 Sch 2 para 18(2)(b).

5 Criminal Justice and Immigration Act 2008 Sch 2 para 18(5).

6 Criminal Justice and Immigration Act 2008 Sch 2 para 18(3).

7 Criminal Justice and Immigration Act 2008 Sch 2 para 18(4). A person sentenced under Sch 2 para 18(4) for an offence may appeal to the Crown Court against the sentence: Sch 2 para 18(7).

8 Criminal Justice and Immigration Act 2008 Sch 2 para 18(6).

9 Is a direction in relation to further proceedings under the Criminal Justice and Immigration Act 2008 Sch 1 para 36 (see PARA 202 note 3).

10 Criminal Justice and Immigration Act 2008 Sch 2 para 18(8)(a).

11 Is but for the Criminal Justice and Immigration Act 2008 Sch 2 para 18(9) (see the text and notes 13-14).

12 Criminal Justice and Immigration Act 2008 Sch 2 para 18(8)(b).

13 le instead of proceeding under the Criminal Justice and Immigration Act 2008 Sch 2 para 18(3) (see the text and note 6).

14 Criminal Justice and Immigration Act 2008 Sch 2 para 18(9). See further PARA 223 (powers of Crown Court). Where the convicting court deals with an offender's case under Sch 2 para 18(9) or Sch 2 para 18(11) it must send to the Crown Court such particulars of the case as may be desirable: Sch 2 para 18(12).

15 See note 9.

16 Criminal Justice and Immigration Act 2008 Sch 2 para 18(10).

17 Criminal Justice and Immigration Act 2008 Sch 2 para 18(11). See note 14.

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223. Powers of Crown Court.

If:

- 721 (1) a youth rehabilitation order¹ is in force in respect of an offender²; and
- 722 (2) the offender is convicted by the Crown Court of an offence³ or is brought or appears⁴ before the Crown Court⁵,

the Crown Court may, if it considers that it would be in the interests of justice to do so having regard to circumstances which have arisen since the youth rehabilitation order was made⁶, revoke the order⁷ and deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could have dealt with the offender for that offence⁸.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11. As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 2 para 19(1)(a). As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 2 para 19(1)(b)(i).

4 ie by virtue of Criminal Justice and Immigration Act 2008 Sch 2 para 18(9) or (11) (see PARA 222) or having been committed by the magistrates' court to the Crown Court for sentence: Criminal Justice and Immigration Act 2008 Sch 2 para 19(1)(b)(ii). If the offender is brought or appears before the Crown Court by virtue of Sch 2 para 18(9) or (11) the Crown Court may deal with the offender for the further offence in any way which the convicting court could have dealt with the offender for that offence: Sch 2 para 19(6). As to the meanings of 'further offence' and 'convicting court' see Sch 2 para 18; and PARA 222 (definitions applied by Sch 2 para 19(7)).

5 Criminal Justice and Immigration Act 2008 Sch 2 para 19(1)(b)(ii).

6 Criminal Justice and Immigration Act 2008 Sch 2 para 19(4).

7 Criminal Justice and Immigration Act 2008 Sch 2 para 19(2).

8 Criminal Justice and Immigration Act 2008 Sch 2 para 19(3). In so dealing with an offender the Crown Court must take into account the extent to which the offender has complied with the order: Sch 2 para 19(5).

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E. ORDERS OPERATING IN NORTHERN IRELAND

224. Supervision arrangements.

Where the court considering the making of a youth rehabilitation order¹ is satisfied that the offender² resides in Northern Ireland, or will reside there when the order takes effect³, it may not so make an order in respect of the offender unless it appears to the court that the conditions imposed by the order are compliant with similar requirements which may be imposed in Northern Ireland and that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland⁴.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 As to the meaning of 'offender' see PARA 212 note 2.

3 Criminal Justice and Immigration Act 2008 Sch 3 para 1(1).

Where a change is made to the law in Northern Ireland adding further descriptions of orders to the kinds of orders which a court in that jurisdiction may impose in dealing with an offender aged under 18 at the time of conviction the Secretary of State may by order make such amendments to Sch 3 (see PARAS 225-228) as appear expedient in consequence of the change: Sch 3 para 17. At the date at which this volume states the law no such order had been made.

4 See the Criminal Justice and Immigration Act 2008 Sch 3 para 1(2); and PARA 225.

A youth rehabilitation order made in accordance with Sch 3 para 1 must specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment takes effect (Sch 3 para 3(a)) and specify as the corresponding order for these purposes an order that may be made by a court in Northern Ireland (Sch 3 para 3(b)). Schedule 1 para 33 (local justice area to be specified: see PARA 202) does not apply to an order so made or amended: Sch 3 para 3.

Where a youth rehabilitation order is made or amended in accordance with these provisions the court which makes or amends the order must provide the following persons with a copy of the order as made or amended:

201 (1) the offender (Sch 3 para 4(2)(a), (3)(a));

202 (2) where the offender is aged under 14, the offender's parent or guardian or, if an authority in Northern Ireland has parental responsibility for, and is looking after, the offender, the authority (Sch 3 para 4(3)(b));

203 (3) the body which is to make suitable arrangements for the offender's supervision under the order (Sch 3 para 4(3)(c)); and

204 (4) the home court (Sch 3 para 4(3)(d)),

and must provide the home court with such other documents and information relating to the case as it considers likely to be of assistance to that court (Sch 3 para 4(2)(b)). The provisions of Sch 1 para 34(1)-(3) (provision of copies of relevant orders: see PARA 202) do not apply in these circumstances: Sch 3 para 4(2).

For these purposes 'home court' means the court of summary jurisdiction acting for the petty sessions district in Northern Ireland in which the offender resides or proposes to reside or, where the youth rehabilitation order was made or amended by the Crown Court and the Crown Court in Northern Ireland has not made a direction under Sch 3 para 11 (see PARA 226), the Crown Court in Northern Ireland Sch 3 paras 4(5), (8)). As to the meanings of 'authority' and 'parental responsibility' for these purposes, and as to references to an offender who is looked

after by an authority, see the Children (Northern Ireland) Order 1995, SI 1995/755 (NI 2), arts 2, 25 (definitions applied by the Criminal Justice and Immigration Act 2008 Sch 3 para 4(4)).

Before making or amending a youth rehabilitation order in these circumstances the court must explain to the offender in ordinary language:

- 205 (a) the requirements of the legislation in Northern Ireland relating to the order to be specified under Sch 3 para 3(b) (Sch 3 para 4(1)(a));
- 206 (b) the powers of the home court under that legislation (as modified by Sch 3 paras 7-17) (Sch 3 para 4(1)(b)); and
- 207 (c) its own powers under Sch 3 paras 7-17 (Sch 3 para 4(1)(c)).

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225. Making of order in respect of offender residing in Northern Ireland.

A court may not make a youth rehabilitation order¹ in respect of an offender² who resides or will reside in Northern Ireland³ unless:

- 723 (1) the number of hours, days or months in respect of which any requirement of the order⁴ is imposed is no greater than the number of hours, days or months which may be imposed by a court in Northern Ireland in respect of a similar requirement in the order which the court proposes to specify⁵ as the corresponding order⁶; and
- 724 (2) suitable arrangements for the offender's supervision⁷ can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by order⁸.

In addition, a court may not make in respect of such an offender a youth rehabilitation order imposing one or more specified requirements⁹ unless:

- 725 (a) arrangements exist for persons to comply with such a requirement in the petty sessions district in Northern Ireland in which the offender resides, or will be residing when the order takes effect¹⁰; and
- 726 (b) provision can be made for the offender to comply with the requirement under those arrangements¹¹.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 As to the meaning of 'offender' see PARA 212 note 2.

3 See PARA 224 et seq.

4 As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq. The court may not by virtue of these provisions require a local authority residence requirement (see PARA 301) or a fostering requirement (see PARA 302) to be complied with in Northern Ireland: Criminal Justice and Immigration Act 2008 Sch 3 para 1(7).

5 I.e. under the Criminal Justice and Immigration Act 2008 Sch 3 para 3(b) (see PARA 224).

6 Criminal Justice and Immigration Act 2008 Sch 3 para 1(2)(b), (3).

7 'Supervision', in relation to a youth rehabilitation order which a court is considering making or amending in accordance with the Criminal Justice and Immigration Act 2008 Sch 3 para 1 or Sch 3 para 2 (see PARAS 224-226), means the performance of supervisory, enforcement and other related functions conferred by the legislation which has effect in Northern Ireland relating to corresponding orders of the kind which the court proposes to specify under Sch 3 para 3(b) (see PARA 224): Criminal Justice and Immigration Act 2008 Sch 3 para 6.

8 Criminal Justice and Immigration Act 2008 Sch 3 para 1(4).

9 I.e. an activity requirement (see PARA 272) (including an extended activity requirement (see PARA 204)), an unpaid work requirement (see PARA 287), a programme requirement (see PARA 289), an attendance centre requirement (see PARA 300), a mental health treatment requirement (see PARA 278), a drug treatment

requirement (see PARA 295), a drug testing requirement (see PARA 296), an education requirement (see PARA 303) or an electronic monitoring requirement (see PARA 203): Criminal Justice and Immigration Act 2008 Sch 3 para 1(2)(a), (6).

10 Criminal Justice and Immigration Act 2008 Sch 3 para 1(5)(a).

11 Criminal Justice and Immigration Act 2008 Sch 3 para 1(5)(b).

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226. Amendment of order in respect of offender residing in Northern Ireland.

Where the appropriate court¹ is satisfied that an offender² in respect of whom a youth rehabilitation order³ is in force is residing or proposes to reside in Northern Ireland⁴, the power of the court to amend the order⁵ includes power to amend it by requiring it to be complied with in Northern Ireland if it appears to the court that:

- 727 (1) the number of hours, days or months in respect of which any requirement of the order⁶ is imposed is no greater than the number of hours, days or months which may be imposed by a court in Northern Ireland in respect of a similar requirement in the order which the court proposes to specify⁷ as the corresponding order⁸; and
- 728 (2) suitable arrangements for the offender's supervision⁹ can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by order¹⁰.

In addition, the power of the court to amend a youth rehabilitation order made in respect of such an offender which imposes one or more specified requirements¹¹ includes power to amend it by requiring it to be complied with in Northern Ireland if it appears to the court that:

- 729 (a) arrangements exist for persons to comply with such a requirement in the petty sessions district in Northern Ireland in which the offender resides, or will be residing when the amendment to the order takes effect¹²; and
- 730 (b) provision can be made for the offender to comply with the requirement under those arrangements¹³.

1 For these purposes 'appropriate court' means either the Crown Court or:

208 (1) if the offender is aged under 18 when the application under the Criminal Justice and Immigration Act 2008 Sch 2 para 13(1) (see PARA 218) was made, a youth court acting in the local justice area specified in the youth rehabilitation order (Sch 2 para 13(6)(a), Sch 3 para 2(1)); and

209 (2) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area (Sch 2 para 13(6)(b)).

As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq. As to the age of an offender for sentencing purposes see PARAS 27, 202 note 1. Where a youth rehabilitation order was made or amended by the Crown Court, the Crown Court in Northern Ireland may direct that any proceedings in Northern Ireland in relation to the order be before the court of summary jurisdiction acting for the petty sessions district in which the offender resides or proposes to reside: Sch 3 para 11.

2 As to the meaning of 'offender' see PARA 212 note 2.

3 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

4 Criminal Justice and Immigration Act 2008 Sch 3 para 2(1).

5 ie under the Criminal Justice and Immigration Act 2008 Sch 2 paras 13-17 (see PARAS 218-220).

6 As to the requirements which may be imposed by a youth rehabilitation order see PARA 202 et seq. The court may not by virtue of these provisions require a local authority residence requirement (see PARA 301) or a fostering requirement (see PARA 302) to be complied with in Northern Ireland: Criminal Justice and Immigration Act 2008 Sch 3 para 2(7).

7 le under the Criminal Justice and Immigration Act 2008 Sch 3 para 3(b) (see PARA 224).

8 Criminal Justice and Immigration Act 2008 Sch 3 para 2(2)(b), (3).

9 As to the meaning of 'supervision' see PARA 225 note 7.

10 Criminal Justice and Immigration Act 2008 Sch 3 para 2(4).

11 le an activity requirement (see PARA 272) (including an extended activity requirement (see PARA 204)), an unpaid work requirement (see PARA 271), a programme requirement (see PARA 273), an attendance centre requirement (see PARA 283), a mental health treatment requirement (see PARA 294), a drug treatment requirement (see PARA 295), a drug testing requirement (see PARA 296), an education requirement (see PARA 303) or an electronic monitoring requirement (see PARA 203): Criminal Justice and Immigration Act 2008 Sch 3 para 2(2)(a), (6).

12 Criminal Justice and Immigration Act 2008 Sch 3 para 2(5)(a).

13 Criminal Justice and Immigration Act 2008 Sch 3 para 2(5)(b).

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227. Status of transferred order.

Where a youth rehabilitation order¹ is made or amended² so as to take effect in Northern Ireland the order is to be treated in Northern Ireland as if it were a corresponding order³ and the legislation which has effect in Northern Ireland in relation to such orders applies accordingly⁴.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 In accordance with the Criminal Justice and Immigration Act 2008 Sch 3 Pt 1 (paras 1-6: see PARAS 224-226). These provisions are subject to Sch 3 paras 12-16 (see PARA 228): Sch 3 paras 7, 9(2).

3 'Corresponding order' means the order specified under the Criminal Justice and Immigration Act 2008 Sch 3 para 3(b) (see PARA 224 note 4): Sch 3 para 8.

4 Criminal Justice and Immigration Act 2008 Sch 3 para 9(1).

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228. Powers of home courts.

Where a youth rehabilitation order¹ is made or amended² so as to take effect in Northern Ireland the home court³ may exercise in relation to the order any power which it could exercise in relation to a corresponding order⁴ made by a court in Northern Ireland, by virtue of the legislation relating to such orders which has effect there, except the following:

- 731 (1) any power to discharge or revoke the order (other than a power to revoke the order where the offender⁵ has been convicted of a further offence and the court has imposed a custodial sentence)⁶;
- 732 (2) any power to deal with the offender for the offence in respect of which the order was made⁷;
- 733 (3) in the case of a youth rehabilitation order imposing a curfew requirement⁸, any power to vary the order by substituting for the period specified in it any longer period than the court which made the order could have specified⁹.

If it appears to the home court:

- 734 (a) upon a complaint being made to a lay magistrate acting for the petty sessions district for the time being specified in the order that the offender has failed to comply with one or more requirements of the order¹⁰; or
- 735 (b) on the application of the offender or the relevant officer¹¹, that it would be in the interests of justice for a power of revocation or amendment¹² to be exercised¹³,

the home court may require the offender to appear before the relevant court in England and Wales¹⁴.

1 A youth rehabilitation order may be made only if the offence for which the offender has been convicted was committed on or after 30 November 2009: see PARAS 163, 202. In respect of offences committed before that date a youth community order may be made: see PARA 229. As to community sentences generally see PARA 163 et seq. As to the making of orders on appeal see PARA 214 note 11.

2 In accordance with the Criminal Justice and Immigration Act 2008 Sch 3 Pt 1 (paras 1-6: see PARAS 224-226).

3 As to the meaning of 'home court' see PARA 224 note 4.

4 As to the meaning of 'corresponding order' see PARA 227 note 3.

5 As to the meaning of 'offender' see PARA 212 note 2.

6 Criminal Justice and Immigration Act 2008 Sch 3 para 12(a).

7 Criminal Justice and Immigration Act 2008 Sch 3 para 12(b).

8 As to curfew requirements see PARA 275.

9 Criminal Justice and Immigration Act 2008 Sch 3 para 12(c).

10 Criminal Justice and Immigration Act 2008 Sch 3 para 13(2).

11 le the person responsible for the offender's supervision under the order: Criminal Justice and Immigration Act 2008 Sch 3 para 8. 'Supervision' means the performance of supervisory, enforcement and other related functions conferred by the legislation which has effect in Northern Ireland relating to the corresponding order: Sch 3 para 8.

12 le a power conferred by the Criminal Justice and Immigration Act 2008 Sch 2 paras 11-14 (see PARAS 216-218).

13 Criminal Justice and Immigration Act 2008 Sch 3 para 13(3).

14 Criminal Justice and Immigration Act 2008 Sch 3 para 13(1). 'Relevant court in England or Wales' means:

210 (1) the court in England and Wales which made or which last amended the order (Sch 3 para 8); or

211 (2) if the order was made by the Crown Court and includes a direction under Sch 1 para 36 (see PARA 202), such youth court or other magistrates' court as may be specified in the order (Sch 3 para 8).

As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

Where an offender is required by this provision to appear before the relevant court in England and Wales, the home court must send to that court a certificate certifying that the offender has failed to comply with such of the requirements of the order as may be specified in the certificate, together with such other particulars of the case as may be desirable (Sch 3 para 14(a)); and a certificate purporting to be signed by the clerk of the home court (or, if the home court is the Crown Court in Northern Ireland, by the chief clerk) is admissible as evidence of the failure before the relevant court in England and Wales (Sch 3 para 14(b)).

Where an offender is required by virtue of Sch 3 para 13 to appear before the relevant court in England and Wales that court may issue a warrant for his arrest (Sch 3 para 15(a)) and may exercise any power which it could exercise in respect of the youth rehabilitation order if the offender resided in England and Wales (Sch 3 para 15(b)). Any enactment relating to the exercise of such powers has effect accordingly, and with any reference to the responsible officer being read as a reference to the relevant officer: Sch 3 para 15. Schedule 3 para 15(b) does not enable the court to amend the youth rehabilitation order unless it appears to the court that the conditions in Sch 3 para 2(2)(a), (b) (see PARA 226) are satisfied in relation to any requirement to be imposed: Sch 3 para 16(1). Schedule 3 paras 1-16 have effect in relation to the amendment of a youth rehabilitation order by virtue of Sch 3 para 15(b) as they have effect in relation to the amendment of such an order by virtue of Sch 3 para 2(2): Sch 3 para 16(2). See further Sch 2 para 21; and PARA 213 note 4.

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(ii) Youth Community Orders

A. INTRODUCTION

229. Youth community orders.

A 'youth community order' means¹:

- 736 (1) a curfew order²;
- 737 (2) an exclusion order³;
- 738 (3) an action plan order⁴;
- 739 (4) a supervision order⁵;
- 740 (5) an attendance centre order⁶.

These orders may be made in respect of offences committed before 30 November 2009⁷ by offenders aged under 16 or under 18, depending on the type of order being made: curfew orders, exclusion orders and attendance centre orders may only be made in respect of persons aged under 16, while supervision orders and action plan orders may only be made in respect of persons aged under 18⁸. A sentence consisting of one or more youth community orders is a 'community sentence'⁹. In respect of offences committed on or after 30 November 2009 all these orders have been replaced by the single youth rehabilitation order, which may be made in respect of persons aged under 18¹⁰.

1 Ie by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 33(1) (s 33 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 95) and the Criminal Justice Act 2003 s 147(2). These provisions have been repealed: see note 9.

2 As to curfew orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 s 163) see PARA 231 et seq.

3 As to exclusion orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 s 40A) see PARA 232 et seq.

4 As to action plan orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 s 69(1)) see PARA 242 et seq.

5 As to supervision orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 s 63(1)) see PARA 250 et seq.

6 As to attendance centre orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 ss 60, 163) see PARA 267 et seq. Note that while attendance centre orders made under s 60(1)(a) (ie on conviction for an offence) are abolished in respect of offences committed on or after 30 November 2009 along with the other youth community orders, attendance centre orders made under s 60(1)(b) or (c) (order following non-payment of sum or failure to abstain from conduct) continue to have effect until a day to be appointed: see PARA 267.

7 The power to make youth community orders was abolished in relation to offences committed on or after 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1 (see PARA 163), but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date: see Sch 27 para 1.

8 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 37(1), 40A(1), 60(1), 63(1), 69(1); and PARAS 231, 232, 242, 250, 267. As to the age of an offender for sentencing purposes see PARA 27.

9 See the Powers of Criminal Courts (Sentencing) Act 2000 s 33(2) (as substituted (see note 1); repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1); the Criminal Justice Act 2003 s 147(1) (s 147(1) amended, s 147(2) repealed, as from 30 November 2009, by the Criminal Justice and Immigration Act 2008 Sch 4 Pt 1 paras 71, 72, Sch 28 Pt 1); and the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(u)(xvii). The Criminal Justice Act 2003 s 147 came into force on 4 April 2005 and does not apply to an offence committed before that date: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2, Sch 1 para 7, Sch 2 para 5(1), (2).

As to community sentences generally see PARA 163 et seq.

10 See the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8); the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(a)-(h), (m)-(o), (u)(xvii); and PARA 202 et seq.

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230. Electronic monitoring requirements in youth community orders.

A youth community order¹ may include requirements for securing the electronic monitoring of the offender's compliance with any other requirements imposed by the order². There may not be included in a youth community order such a requirement unless the court:

- 741 (1) has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant area³; and
- 742 (2) is satisfied that the necessary provision can be made under those arrangements⁴.

Where:

- 743 (a) it is proposed to include in an exclusion order⁵ such a requirement for securing electronic monitoring⁶; but
- 744 (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring⁷,

the requirement may not be included in the order without that person's consent⁸.

An order which includes electronic monitoring requirements⁹ must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State¹⁰.

1 The power to make youth community orders was abolished in relation to offences committed on or after 30 November 2009 pursuant to their replacement by youth rehabilitation orders, but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date: see the Criminal Justice and Immigration Act 2008 Sch 27 para 1, Sch 28 Pt 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229. As to the meaning of 'youth community order' see PARA 229. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally see PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(1) (s 36B added by the Criminal Justice and Court Services Act 2000 s 52; Powers of Criminal Courts (Sentencing) Act 2000 s 36B(1), (2), (6)(a), (9) amended by the Criminal Justice Act 2003 Sch 32 paras 90, 96(1), (3), (4), Sch 37 Pt 7). The Powers of Criminal Courts (Sentencing) Act 2000 s 36B is prospectively repealed by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, pursuant to the replacement of youth community orders by youth rehabilitation orders (see note 1); but at the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

Where a curfew order (see PARA 231) is made with an electronic monitoring requirement, the court officer must serve notice of the order on the person in respect of whom it is made by way of pages 1 and 2 of the form set out in *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533, Annex D, CA; *Amendment to the Consolidated Criminal Practice Direction (Forms for Use in Criminal Proceedings)* [2005] 2 All ER 916, [2005] 1 WLR 1479, Annex D, CA: CrimPR 48.1(1), (2). The court officer must serve notice of the order on the person responsible for electronically monitoring compliance with it by way of the form set out in *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533, Annex D, CA; *Amendment to the Consolidated Criminal Practice Direction (Forms for Use in Criminal Proceedings)* [2005] 2 All ER 916, [2005] 1 WLR 1479, Annex D, CA: CrimPR 48.1(3). Where any community order additional to the curfew order has been made in respect of the offender, the court officer must serve a

copy of the required notice on the local probation board, provider of probation services or youth offending team responsible for the offender: CrimPR 48.1(4) (amended by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(2)(a) (as added, amended and prospectively repealed: see note 2). In the case of a curfew order (see PARA 231) or an exclusion order (see PARA 232), the relevant area is the area in which the place proposed to be specified in the order is situated: s 36B(7) (as so added and prospectively repealed). In s 36B(7) 'place', in relation to an exclusion area, has the same meaning as in s 40A (see PARA 232): s 36B(7) (as so added and prospectively repealed). In the case of a supervision order (see PARA 250) or an action plan order (see PARA 242), the relevant area is the local justice area proposed to be specified in the order: s 36B(9) (as so added, amended and prospectively repealed; and s 36B(9), (10) further amended by SI 2005/886). In the case of an attendance centre order (see PARA 267), the relevant area is the local justice area in which the attendance centre proposed to be specified in the order is situated: Powers of Criminal Courts (Sentencing) Act 2000 s 36B(10) (as so added, amended and prospectively repealed).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(2)(b) (as added and prospectively repealed: see note 2).

5 As to the meaning of 'exclusion order' see PARA 232.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(3)(a) (as added and prospectively repealed: see note 2).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(3)(b) (as added and prospectively repealed: see note 2).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(3) (as added and prospectively repealed: see note 2).

9 The requirements under the Powers of Criminal Courts (Sentencing) Act 2000 s 36B(1) (see the text and notes 1, 2).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 36B(5) (as added and prospectively repealed: see note 2). The Secretary of State may make rules for regulating: (1) the electronic monitoring of compliance with requirements included in a youth community order (s 36B(6)(a) (as so added, amended and prospectively repealed)); and (2) without prejudice to the generality of head (1) above, the functions of persons made responsible for securing the electronic monitoring of compliance with requirements included in the order (s 36B(6)(b) (as so added and prospectively repealed)). The Community Order (Electronic Monitoring of Requirements) (Responsible Officer) Order 2001, SI 2001/2233 (amended by SI 2001/3346; SI 2005/984) has been made under this provision.

UPDATE

230 Electronic monitoring requirements in youth community orders

NOTE 2--CrimPR 48.1 now Criminal Procedure Rules 2010, SI 2010/60, r 48.1.

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B. CURFEW ORDERS AND EXCLUSION ORDERS

231. Curfew orders.

Where a person aged under 16¹ is convicted of an offence committed before 30 November 2009² the court by or before which he is convicted may³ make an order requiring him to remain, for periods specified in the order, at a place so specified⁴. Such an order is referred to as a curfew order⁵.

A curfew order may specify different places or different periods for different days, but may not specify:

- 745 (1) periods which fall outside the period of six months⁶ beginning with the day on which it is made⁷; or
- 746 (2) periods which amount to less than two hours or more than 12 hours in any one day⁸.

The requirements in a curfew order must, as far as practicable, be such as to avoid:

- 747 (a) any conflict with the offender's religious beliefs or with the requirements of any other youth community order to which he may be subject⁹; and
- 748 (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment¹⁰.

A curfew order must include provision for making a person responsible for monitoring the offender's whereabouts during the curfew periods specified in the order; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State¹¹.

A court may not make a curfew order unless the court has been notified by the Secretary of State that arrangements for monitoring the offender's whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn¹². Before making a curfew order, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender)¹³. Before making a curfew order in respect of an offender, the court must obtain and consider information about his family circumstances and the likely effect of such an order on those circumstances¹⁴.

The court by which a curfew order is made must give a copy of the order to the offender and to the responsible officer¹⁵.

1 As to the age of an offender for sentencing purposes see PARA 27.

2 The power to make curfew orders (which are youth community orders) was abolished in relation to offences committed on or after 30 November 2009 pursuant to the replacement of youth community orders by youth rehabilitation orders, but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of

an offence committed before that date: see the Criminal Justice and Immigration Act 2008 Sch 27 para 1, Sch 28 Pt 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229. As to the meaning of 'youth community order' see PARA 229. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

3 le subject to the Criminal Justice Act 2003 s 148 (see PARA 164), s 150 (see PARA 166) and s 156 (see PARA 617).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 37(1) (s 37(1), (5)(a) amended by the Criminal Justice Act 2003 s 304, Sch 32 paras 90, 97(1)-(3); Powers of Criminal Courts (Sentencing) Act 2000 ss 37, 40 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1 (see note 2)).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 37(2) (repealed: see notes 2, 4). A curfew order may be made with an electronic monitoring requirement: see PARA 230.

6 Six months is the period stated by the Powers of Criminal Courts (Sentencing) Act 2000 s 37(3) (repealed: see notes 2, 4). See also s 37(4) (repealed).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 37(3)(a) (repealed: see notes 2, 4). The Secretary of State may by order direct that s 37(3) is to have effect with the substitution, for any period there specified, of such period as may be specified in the order: s 40(2)(a) (repealed). Such an order may make any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order: s 40(3) (added by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 164(b); and amended by the Criminal Justice Act 2003 Sch 32 paras 90, 99). At the date at which this volume states the law no such order had been made.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 37(3)(b) (repealed: see notes 2, 4). See note 7.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 37(5)(a) (as amended and repealed: see notes 2, 4). The Secretary of State may by order direct that the Powers of Criminal Courts (Sentencing) Act 2000 s 37(5) is to have effect with such additional restrictions as may be specified in the order: s 40(2)(b). At the date at which this volume states the law no such order had been made.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 37(5)(b) (repealed: see notes 2, 4). See note 9.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 37(6) (repealed: see notes 2, 4). See the Curfew Order and Curfew Requirement (Responsible Officer) Order 2001, SI 2001/2234 (amended by SI 2001/3344; SI 2005/617; SI 2005/984); and the Electronic Monitoring (Responsible Officers) (Amendment) Order 2005, SI 2005/984. The Secretary of State may also make rules for regulating the monitoring of the whereabouts of persons who are subject to curfew orders and, without prejudice to the generality of this, the functions of the responsible officers of persons who are subject to curfew orders: s 40(1) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 164(a), Sch 8). At the date at which this volume states the law no such rules had been made.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 37(7) (repealed: see notes 2, 4).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 37(8) (repealed: see notes 2, 4).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 37(9) (amended by the Criminal Justice Act 2003 Sch 37 Pt 7; repealed (see notes 2, 4)).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 37(11) (repealed: see notes 2, 4). 'Responsible officer', in relation to an offender subject to a curfew order, means:

212 (1) where the offender is also subject to a supervision order (see PARA 250 et seq), the person who is the supervisor in relation to the supervision order (s 37(12)(a) (s 37(12) substituted by the Anti-social Behaviour Act 2003 Sch 2 para 2(1), (3); repealed));

213 (2) in any other case, the person who is responsible for monitoring the offender's whereabouts during the curfew periods specified in the order (s 37(12)(b) (as so substituted and repealed)).

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232. Exclusion orders.

Where a person aged under 16¹ is convicted of an offence committed before 30 November 2009² the court by or before which he is convicted may³ make an order prohibiting him from entering a place⁴ specified in the order for a period so specified of not more than three months⁵. Such an order is referred to as an exclusion order⁶.

An exclusion order:

749 (1) may provide for the prohibition to operate only during the periods specified in the order⁷;

750 (2) may specify different places for different periods or days⁸.

The requirements in an exclusion order must, as far as practicable, be such as to avoid:

751 (a) any conflict with the offender's religious beliefs or with the requirements of any other youth community order to which he may be subject⁹; and

752 (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment¹⁰.

An exclusion order must include provision for making a person responsible for monitoring the offender's whereabouts during the periods when the prohibition operates; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State¹¹. An exclusion order must specify the local justice area in which the offender resides or will reside¹².

A court may not make an exclusion order unless the court has been notified by the Secretary of State that arrangements for monitoring the offender's whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn¹³.

Before making an exclusion order in respect of an offender the court must obtain and consider information about his family circumstances and the likely effect of such an order on those circumstances¹⁴.

The court by which an exclusion order is made must:

753 (i) give a copy of the order to the offender and the responsible officer¹⁵; and

754 (ii) give to any affected person¹⁶ any information relating to the order which the court considers it appropriate for him to have¹⁷.

1 As to the age of an offender for sentencing purposes see PARA 27.

2 The power to make exclusion orders (which are youth community orders) was abolished in relation to offences committed on or after 30 November 2009 pursuant to the replacement of youth community orders by youth rehabilitation orders, but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date: see the Criminal Justice and Immigration Act 2008 Sch 27 para 1, Sch 28 Pt 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order

2009, SI 2009/3074; and PARAS 163, 229. As to the meaning of 'youth community order' see PARA 229. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

3 le subject to the Criminal Justice Act 2003 s 148 (see PARA 164), s 150 (see PARA 166), s 156 (see PARA 617). See note 5.

4 For these purposes, 'place' includes an area: Powers of Criminal Courts (Sentencing) Act 2000 s 40A(12) (ss 40A, 40C added by the Criminal Justice and Court Services Act 2000 s 46; repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1 (see note 2)).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(1) (as added and repealed: see notes 1, 2, 4; s 40A(1), (5)(a), (9) amended by the Criminal Justice Act 2003 Sch 32 paras 90, 100).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(2) (as added and repealed: see notes 1, 2, 4).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(3)(a) (as added and repealed: see notes 1, 2, 4).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(3)(b) (as added and repealed: see notes 1, 2, 4).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(5)(a) (as added, amended and repealed: see notes 1, 2, 4).

The Secretary of State may by order direct that the Powers of Criminal Courts (Sentencing) Act 2000 40A(5) (as added and amended) is to have effect with such additional restrictions as may be specified in the order: s 40C(2) (as so added and repealed). At the date at which this volume states the law no such order had been made.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(5)(b) (as added and repealed: see notes 1, 2, 4).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(6) (as added and repealed: see notes 1, 2, 4). See the Exclusion Order (Monitoring of Offenders) Order 2005, SI 2005/979. The Secretary of State may also make rules for regulating the monitoring of the whereabouts of persons who are subject to exclusion orders and the functions of persons who are responsible officers in relation to offenders subject to exclusion orders: Powers of Criminal Courts (Sentencing) Act 2000 s 40C(1) (as so added and repealed). At the date at which this volume states the law no such rules had been made.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(7) (as added and repealed (see notes 1, 2, 4); amended by SI 2005/886).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(8) (as added and repealed: see notes 1, 2, 4).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(9) (as added, amended and repealed: see notes 1, 2, 4, 5).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(11)(a) (as added and repealed: see notes 1, 2, 4). 'Responsible officer', in relation to an offender subject to an exclusion order, means the person who is responsible for monitoring the offender's whereabouts during the periods when the prohibition operates: s 40A(14) (as so added and repealed).

16 A person is an 'affected person' in relation to an exclusion order if:

214 (1) a requirement under the Powers of Criminal Courts (Sentencing) Act 2000 s 36B(1) (see PARA 230) is included in the order by virtue of his consent (s 40A(13)(a) (as added and repealed: see notes 1, 2, 4)); or

215 (2) a prohibition is included in the order for the purpose (or partly for the purpose) of protecting him from being approached by the offender (s 40A(13)(b) (as so added and repealed)).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 40A(11)(b) (as added and repealed: see notes 1, 2, 4).

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233. Breach of requirement of curfew order or exclusion order.

If at any time while a curfew order¹ or an exclusion order² is in force it appears on information to a justice of the peace that the offender has failed to comply with any of the requirements of the order he may:

- 755 (1) issue a summons requiring the offender to appear at the place and time specified in it³; or
- 756 (2) if the information is in writing and on oath, issue a warrant for his arrest⁴.

An offender convicted of a further offence while a curfew or exclusion order is in force is not on that account liable to be dealt with⁵ in respect of a failure to comply with any requirement of the order⁶.

1 See PARA 231.

2 See PARA 232.

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 3(1)(a) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 3(1) amended, Sch 3 para 3(2)(b) substituted, by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 5(1)-(3); Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq.

A summons or warrant under Sch 3 para 3 must direct the offender to appear or be brought: (1) in the case of any curfew or exclusion order which was made by the Crown Court and included a direction that any failure to comply with any of the requirements of the order be dealt with by the Crown Court, before the Crown Court (Sch 3 para 3(2)(a) (as so substituted and repealed)); and (2) in the case of a curfew or exclusion order which is not an order to which head (1) above applies, before a magistrates' court acting in the local justice area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned (Sch 3 para 3(2)(b) (as so substituted and repealed; amended by virtue of SI 2005/886)). In relation to a curfew order, 'local justice area concerned' means the local justice area in which the place for the time being specified in the order is situated; and in relation to an exclusion order, it means the local justice area for the time being specified in the order: Sch 3 para 1 (as so substituted and repealed; amended by virtue of SI 2005/886).

Where a summons issued under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 3(1)(a) requires an offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a further summons requiring the offender to appear at the place and time specified in it: Sch 3 para 3(3) (as so substituted and repealed). Where a summons issued under Sch 3 para 3(1)(a) or a further summons issued under Sch 3 para 3(3) requires an offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender: Sch 3 para 3(4) (as so substituted and repealed).

Where a curfew or exclusion order has been made on appeal it is deemed for these purposes: (a) if it was made on an appeal brought from a magistrates' court, to have been made by a magistrates' court (Sch 3 para 2(a) (as so substituted and repealed)); and (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (Sch 3 para 2(b) (as so substituted and repealed)).

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 3(1)(b) (as substituted and repealed: see note 3). As to the issue of a summons see note 4. As to the power of magistrates' courts see PARA 234; and as to the power of the Crown Court see PARA 235.

5 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4 (see PARA 234) or Sch 3 para 5 (see PARA 235).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 6 (as substituted and repealed: see note 3).

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234. Magistrates' court's powers on breach of a curfew order or exclusion order.

If it is proved¹ to the satisfaction of a magistrates' court before which an offender appears or is brought² that he has failed without reasonable excuse to comply with any requirement of a curfew order³ or an exclusion order⁴ it may deal with him in any one of the following ways (and must so deal with him if the relevant order is in force):

- 757 (1) by making a curfew order in respect of him⁵;
- 758 (2) by making an attendance centre order⁶ in respect of him⁷; or
- 759 (3) where the relevant order was made by a magistrates' court⁸, by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁹.

Where a curfew or exclusion order was made by the Crown Court¹⁰ and a magistrates' court has power to deal with the offender under head (1) or head (2) above, it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court¹¹.

1 Breach of a community order has to be proved to the criminal standard: see *West Yorkshire Probation Board v Boulter* [2005] EWHC 2342 (Admin), [2006] 1 WLR 232, 169 JP 601.

2 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 3: see PARA 233.

3 See PARA 231.

4 See PARA 232.

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(1), (2)(a) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq.

Any exercise by a court of its power to make a curfew order under these provisions is without prejudice to the continuance of the relevant order: Sch 3 para 9 (as so substituted and repealed). An offender who is convicted of a further offence while a curfew or exclusion order is in force in respect of him will not on that account be liable to be dealt with under Sch 3 para 4 in respect of a failure to comply with any requirement of the order: Sch 3 para 6 (as so substituted and repealed). Sections 36B, 37, 40, Sch 3 (see PARAS 230, 231, 233-241) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of a curfew or exclusion order: see Sch 3 para 7(1)-(4) (as so substituted and repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a curfew order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 7(5) (as so substituted and repealed). See also Sch 3 para 4(4A); and PARA 239 note 3.

6 As to attendance centre orders see PARA 267.

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(2)(b) (as substituted and repealed: see note 5). Any exercise by a court of its power to make an attendance centre order under these provisions is without prejudice to the continuance of the relevant order: Sch 3 para 9 (as so substituted and repealed). Sections

60(1)-(11), 36B, Sch 5 (see PARAS 230, 267-268) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of a curfew or exclusion order: see Sch 3 para 8(1), (2) (as so substituted and repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a curfew order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 8(3) (as so substituted and repealed). See also Sch 3 para 4(4A); and PARA 239 note 3.

8 As to the court by which an order made on appeal is deemed to have been made see PARA 233 note 4.

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(2)(c) (as substituted and repealed: see note 5). In dealing with an offender under these provisions, a magistrates' court:

216 (1) must take into account the extent to which the offender has complied with the requirements of the relevant order (Sch 3 para 4(3)(a) (as so substituted and repealed)); and

217 (2) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence (where the relevant order was made in respect of an offence punishable with such a sentence) notwithstanding anything in the Criminal Justice Act 2003 s 152(2) (see PARA 19) (Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(3)(b) (as so substituted and repealed)).

Where a magistrates' court deals with an offender in this way it must revoke the relevant order if it is still in force: Sch 3 para 4(4) (as so substituted and repealed). A person sentenced under Sch 3 para 4(2)(c) for an offence may appeal to the Crown Court against the sentence: Sch 3 para 4(7) (as so substituted and repealed).

10 See note 9.

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(5) (as substituted and repealed: see note 5). A magistrates' court which deals with an offender's case in this circumstance must send to the Crown Court:

218 (1) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate (Sch 3 para 4(6)(a) (as so substituted and repealed)); and

219 (2) such other particulars of the case as may be desirable (Sch 3 para 4(6)(b) (as so substituted and repealed)),

and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court (Sch 3 para 4(6) (as so substituted and repealed)).

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235. Crown Court's powers on breach of curfew order or exclusion order.

Where an offender is brought or appears before the Crown Court¹ and it is proved to the satisfaction of that court² that he has failed without reasonable excuse to comply with any requirement of a curfew order³ or an exclusion order⁴, it may deal with him in respect of the failure in any one of the following ways (and must so deal with him if the relevant order is in force):

- 760 (1) by making a curfew order in respect of him⁵;
- 761 (2) by making an attendance centre order⁶ in respect of him⁷; or
- 762 (3) by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁸.

Any question whether the offender has failed to comply with these requirements is to be determined by the court and not by the verdict of a jury⁹.

1 He under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 3 (see PARA 233) or Sch 3 para 4(5) (see PARA 234). As to the court by which an order made on appeal is deemed to have been made see PARA 233 note 4.

2 Breach of a community order has to be proved to the criminal standard: see *West Yorkshire Probation Board v Boulter* [2005] EWHC 2342 (Admin), [2006] 1 WLR 232, 169 JP 601.

3 See PARA 231.

4 See PARA 232.

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 5(1), (2)(a) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq.

Any exercise by a court of its power to make a curfew order under these provisions is without prejudice to the continuance of the relevant order: Sch 3 para 9 (as so substituted and repealed). An offender who is convicted of a further offence while a curfew or exclusion order is in force in respect of him will not on that account be liable to be dealt with under Sch 3 para 5 in respect of a failure to comply with any requirement of the order: Sch 3 para 6 (as so substituted and repealed). Sections 36B, 37, 40, Sch 3 (see PARAS 230, 231, 233-241) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of a curfew or exclusion order: see Sch 3 para 7(1)-(4) (as so substituted and repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a curfew order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 7(5) (as so substituted and repealed).

6 As to attendance centre orders see PARA 267.

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 5(2)(b) (as substituted and repealed: see note 5). Any exercise by a court of its power to make an attendance centre order under these provisions is without

prejudice to the continuance of the relevant order: Sch 3 para 9 (as so substituted and repealed). Sections 60(1)-(11), 36B, Sch 5 (see PARAS 230, 267-268) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of a curfew or exclusion order: see Sch 3 para 8(1), (2) (as so substituted and repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a curfew order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 8(3) (as so substituted and repealed). See also Sch 3 para 4(4A); and PARA 239 note 3.

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 5(2)(c) (as substituted and repealed: see note 5). In dealing with an offender under these provisions, the Crown Court:

- 220 (1) must take into account the extent to which the offender has complied with the requirements of the relevant order (Sch 3 para 5(3)(a) (as so substituted and repealed)); and
- 221 (2) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence (where the relevant order was made in respect of an offence punishable with such a sentence) notwithstanding anything in the Criminal Justice Act 2003 s 152(2) (see PARA 19) (Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 5(3)(b) (as so substituted and repealed)).

Where the Crown Court deals with an offender in this way, it must revoke the relevant order if it is still in force: Sch 3 para 5(4) (as so substituted and repealed).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 5(5) (as substituted and repealed: see note 5).

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236. Revocation of order by magistrates' court.

Where a curfew order¹ or an exclusion order² made by a magistrates' court³ is in force and, on the application of either the offender⁴ or the responsible officer⁵ it appears to the appropriate magistrates' court⁶ that, having regard to circumstances which have arisen since the order was made it would be in the interests of justice for the order to be revoked⁷ or that the offender should be dealt with in some other manner for the offence in respect of which the order was made⁸, the court may either:

763 (1) revoke the order⁹; or

764 (2) revoke it and deal with the offender for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made¹⁰.

1 See PARA 231.

2 See PARA 232.

3 As to the court by which an order made on appeal is deemed to have been made see PARA 233 note 4.

4 No application may be made by the offender under this provision while an appeal against the relevant order is pending: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(7) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq.

5 As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15. As to the meaning of 'responsible officer' in connection with an exclusion order see PARA 232 note 15. Where the offender has not applied he must be summoned to appear, and if he does not appear a warrant may be issued for his arrest: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(6) (as substituted and repealed: see note 4).

6 The 'appropriate magistrates' court' is a magistrates' court acting in the local justice area concerned: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(2) (as substituted and repealed (see note 4); amended by SI 2005/886). As to the meaning of 'local justice area concerned' see PARA 233 note 4.

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(1)(a) (as substituted and repealed: see note 4).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(1)(b) (as substituted and repealed: see note 4).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(3)(a) (as substituted and repealed: see note 4).

On the making of an order revoking a relevant order under any of Sch 3 paras 10-13, the proper officer of the court must forthwith give copies of the revoking order to the responsible officer: Sch 3 para 14(1) (as so substituted and repealed). For this purpose 'proper officer' means, in relation to a magistrates' court, the designated officer for the court and in relation to the Crown Court, the appropriate officer: Sch 3 para 14(2) (as so substituted and repealed; amended by SI 2005/886). A responsible officer to whom in accordance with these

provisions copies of a revoking order are given must give a copy to the offender and to the person in charge of any institution in which the offender was required by the order to reside: Sch 3 para 14(3) (as so substituted and repealed).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 10(3)(b) (as substituted and repealed: see note 4). In dealing with an offender under Sch 3 para 10(3)(b) the extent of compliance must be taken into account by the magistrates' court: Sch 3 para 10(4) (as so substituted and repealed). Where a person is sentenced under Sch 3 para 10(3)(b) he may appeal against sentence to the Crown Court: Sch 3 para 10(5) (as so substituted and repealed). See, however, *R v Booth* [1998] 1 Cr App Rep (S) 132, [1997] Crim LR 612, CA (where the court is minded to impose a custodial sentence on the offender it is more appropriate to follow the procedure for breach of the order (see PARA 235), so that the procedure for proving the breach, and considering whether there is a reasonable excuse for the breach, can be followed).

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237. Revocation of order by Crown Court.

Where:

- 765 (1) a curfew order¹ or an exclusion order² made by the Crown Court³ is in force in respect of an offender and the offender or the responsible officer⁴ applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other manner for the offence in respect of which the order was made⁵; or
- 766 (2) an offender in respect of whom a curfew or exclusion order is in force is convicted of an offence before the Crown Court or, having been committed by a magistrates' court to the Crown Court for sentence, is brought or appears before the Crown Court⁶,

then, if it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, it may either:

- 767 (a) revoke the order⁷; or
- 768 (b) revoke it and deal with the offender for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made⁸.

1 See PARA 231.

2 See PARA 232.

3 As to the court by which an order made on appeal is deemed to have been made see PARA 233 note 4.

4 As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15. As to the meaning of 'responsible officer' in connection with an exclusion order see PARA 232 note 15.

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 11(1)(a) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq.

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 11(1)(b) (as substituted and repealed: see note 5).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 11(2)(a) (as substituted and repealed: see note 5). For administrative matters relating to revocations see PARA 236 note 9.

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 11(2)(b) (as substituted and repealed: see note 5). In dealing with an offender under Sch 3 para 11(2)(b) the extent of compliance must be taken into account by the magistrates' court: Sch 3 para 11(3) (as so substituted and repealed). See *R v Day (Carl John)* [1997] 2 Cr App Rep (S) 328, [1997] Crim LR 529, CA. Where the relevant order is made by a magistrates' court and the Crown Court subsequently revokes it, in imposing another sentence the Crown Court is limited to the sentencing powers of the magistrates' court that made the original order: *R v Ogden* [1996] 2 Cr App Rep (S) 386, 160 JP 358, CA; *R v Hewitt* [1996] 2 Cr App Rep (S) 14, [1996] Crim LR 213, CA. The court's powers under

these provisions are not confined to cases where an offence is committed during the currency of a relevant order: *R v Kenny* [1996] 1 Cr App Rep (S) 397, [1995] Crim LR 964, CA.

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238. Revocation following subsequent custodial sentence.

Where:

- 769 (1) an offender in respect of whom a curfew order¹ or an exclusion order² is in force is convicted of an offence by a magistrates' court unconnected with the order³;
- 770 (2) the court imposes a custodial sentence on the offender⁴; and
- 771 (3) it appears to the court, on the application of the offender or the responsible officer⁵, that it would be in the interests of justice to exercise the powers described below having regard to circumstances which have arisen since the order was made⁶,

the court may:

- 772 (a) revoke the order if it was made by a magistrates' court⁷; or
- 773 (b) if the order was made by the Crown Court, commit the offender in custody or release him on bail until he can be brought or appear before the Crown Court⁸.

If an offender is so brought or appears before the Crown Court and it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may then revoke the order⁹.

1 See PARA 231.

2 See PARA 232.

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 12(1)(a) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq. 'Magistrates' court unconnected with the order' means a magistrates' court not acting in the local justice area concerned: Sch 3 para 12(2) (as so substituted and repealed; amended by SI 2005/886). As to the meaning of 'local justice area concerned' see PARA 233 note 4.

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 12(1)(b) (as substituted and repealed: see note 3).

5 As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15. As to the meaning of 'responsible officer' in connection with an exclusion order see PARA 232 note 15.

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 12(1)(c) (as substituted and repealed: see note 3).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 12(3)(a) (as substituted and repealed: see note 3). As to the court by which an order made on appeal is deemed to have been made see PARA 233 note 4. For administrative matters relating to revocations see PARA 236 note 9.

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 12(3)(b) (as substituted and repealed: see note 3). The Crown Court must be sent particulars: Sch 3 para 12(4) (as so substituted and repealed).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 13 (as substituted and repealed: see note 3).

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239. Amendment of order by reason of change of residence.

Where, at any time while a curfew order¹ or an exclusion order² is in force in respect of an offender, a magistrates' court acting for the local justice area concerned³ is satisfied that the offender proposes to change, or has changed, his residence from that local justice area to another local justice area, the court may, and on the application of the responsible officer⁴ must, amend the order by substituting the other local justice area for the area specified in the order or, in the case of a curfew order, a place in that other area for the place so specified⁵.

1 See PARA 231.

2 See PARA 232.

3 As to the meaning of 'local justice area concerned' see PARA 233 note 4. Where a magistrates' court dealing with an offender under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 4(2)(a) or Sch 3 para 4(2)(b) (see PARA 234) would not otherwise have the power under these provisions to amend the relevant order, these provisions have effect as if the reference to a magistrates' court acting in the local justice area concerned were a reference to the court dealing with the offender: Sch 3 para 4(4A) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125 and amended by SI 2005/886; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq.

4 As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15. As to the meaning of 'responsible officer' in connection with an exclusion order see PARA 232 note 15.

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 15(1), (2) (as substituted and repealed: see note 3). No such order may be made while an appeal is pending: Sch 3 para 17 (as so substituted and repealed). Where a court proposes to amend a curfew order or an exclusion order otherwise than on the offender's application (except in the case of an order cancelling a requirement or reducing the period of a requirement or substituting a new local justice area or a new place), the offender must be summoned to appear and if he does not appear a warrant may be issued for his arrest: Sch 3 para 18 (as so substituted and repealed).

For administrative provisions relating to the amendment of curfew and exclusion orders see PARA 241. The court may not amend under these provisions a curfew order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area concerned unless, in accordance with Sch 3 para 16 (see PARA 240), it either cancels those requirements or substitutes for those requirements other requirements which can be complied with if the offender ceases to reside in that area: Sch 3 para 15(3) (as so substituted and repealed).

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240. Amendment of requirements.

A magistrates' court acting in the local justice area concerned¹ may, on the application of an eligible person², by order amend a curfew order³ or an exclusion order⁴ by cancelling any of the requirements of the order⁵ or by inserting any requirement⁶ which it could include if it were then making the order⁷. Curfew periods may not be so extended beyond six months from the original order⁸, and an exclusion order may not be amended by extending the period for which the offender is prohibited from entering the place in question beyond the end of three months from the date of the original order⁹.

¹ As to the meaning of 'local justice area concerned' see PARA 233 note 4.

² I.e. the offender, the responsible officer, and, in relation to an exclusion order, any affected person: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(4) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq. As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15. As to the meaning of 'responsible officer' in connection with an exclusion order see PARA 232 note 15. An application under these provisions by an affected person must be made for the cancellation of a requirement included in the order by virtue of his consent or for the purpose (or partly for the purpose) of protecting him from being approached by the offender, or for the insertion of a requirement which will, if inserted, be such a requirement: see the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(4) (as so substituted and repealed).

No application may be made under Sch 3 para 16 while an appeal is pending: Sch 3 para 17 (as so substituted and repealed). Where a court proposes to amend a curfew order or an exclusion order otherwise than on the offender's application (except in the case of an order cancelling a requirement or reducing the period of a requirement or substituting a new local justice area or a new place), the offender must be summoned to appear and if he does not appear a warrant may be issued for his arrest: Sch 3 para 18 (as so substituted and repealed).

³ See PARA 231.

⁴ See PARA 232.

⁵ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(1)(a) (as substituted and repealed (see note 2); Sch 3 para 16(1) amended by SI 2005/886). For administrative provisions relating to the amendment of curfew and exclusion orders see PARA 241. These provisions are without prejudice to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 15 (see PARA 239): Sch 3 para 16(1) (as so substituted and repealed).

⁶ I.e. in addition to or in substitution for any of the existing requirements of the order: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(1)(b) (as substituted and repealed: see note 2).

⁷ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(1)(b) (as substituted and repealed: see note 2). See note 5.

⁸ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(2) (as substituted and repealed: see note 2).

⁹ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 16(3) (as substituted and repealed: see note 2).

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241. Administrative provisions relating to the amendment of curfew and exclusion orders.

On the making of an order amending¹ a curfew order² or an exclusion order³ the designated officer for the court must forthwith:

- 774 (1) if the order amends the curfew or exclusion order otherwise than by substituting⁴ a new local justice area or a new place for the one specified in the order, give copies of the amending order to the responsible officer⁵;
- 775 (2) if the order amends the curfew or exclusion order as stated, send to the designated officer for the justices for the new local justice area or, as the case may be, for the local justice area in which the new place is situated, copies of the amending order and such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order⁶.

A responsible officer to whom copies of an order are so given must give a copy to the offender and to the person in charge of any institution in which the offender is or was required by the order to reside⁷.

¹ See PARAS 239-240.

² See PARA 231.

³ See PARA 232.

⁴ ie by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 15 (see PARA 239).

⁵ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 19(1)(a) (Sch 3 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125 and amended by SI 2005/886; Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make curfew orders and exclusion orders in respect of offences committed on or after 30 November 2009 see PARAS 231 note 2, 232 note 2. As to community sentences generally see PARA 163 et seq. As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15. As to the meaning of 'responsible officer' in connection with an exclusion order see PARA 232 note 15.

⁶ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 19(1)(b) (as substituted and repealed (see note 5); amended by SI 2005/886). In such a case the designated officer for the justices for that area must give copies of the amending order to the responsible officer: Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 19(1) (as so substituted, amended and repealed).

⁷ Powers of Criminal Courts (Sentencing) Act 2000 Sch 3 para 19(2) (as substituted and repealed: see note 5).

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C. ACTION PLAN ORDERS

242. Action plan orders.

Where a child or young person¹ is convicted of an offence committed before 30 November 2009² the court may³ make an order which:

- 776 (1) requires the offender, for a period of three months beginning with the date of the order, to comply with an action plan, that is to say, a series of requirements with respect to his actions and whereabouts during that period⁴;
- 777 (2) places the offender for that period under the supervision of the responsible officer⁵; and
- 778 (3) requires the offender to comply with any directions given by the responsible officer with a view to the implementation of that plan⁶,

provided the court is of the opinion that the making of such an order is desirable in the interests of securing the rehabilitation of the offender⁷ or preventing the commission by him of further offences⁸. Such an order is referred to as an action plan order⁹.

The court may not make an action plan order in respect of an offender if:

- 779 (a) he is already the subject of such an order¹⁰; or
- 780 (b) the court proposes to pass on him a custodial sentence or to make in respect of him a community order¹¹, an attendance centre order¹², a supervision order¹³ or a referral order¹⁴.

¹ ie a person aged under 18: see PARA 5 note 3. As to the age of an offender for sentencing purposes see PARA 27.

² The power to make action plan orders (which are youth community orders) was abolished in relation to offences committed on or after 30 November 2009 pursuant to the replacement of youth community orders by youth rehabilitation orders, but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date: see the Criminal Justice and Immigration Act 2008 Sch 27 para 1, Sch 28 Pt 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229. As to the meaning of 'youth community order' see PARA 229. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

³ ie subject to the Criminal Justice Act 2003 s 148 (see PARA 164), s 150 (see PARA 166) and s 156 (see PARA 617): Powers of Criminal Courts (Sentencing) Act 2000 s 69(1) (s 69(1) amended by the Criminal Justice Act 2003 Sch 32 paras 90, 104; Powers of Criminal Courts (Sentencing) Act 2000 s 69 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1 (see note 2)).

⁴ Powers of Criminal Courts (Sentencing) Act 2000 s 69(1)(a) (repealed: see note 3). The requirements included in the order may include other authorised requirements under s 70 (see PARAS 244-245): s 69(1) (repealed).

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 69(1)(b) (repealed: see note 3). 'Responsible officer', in relation to an offender subject to an action plan order, means one of the following who is specified in the order, namely:

- 222 (1) an officer of a local probation board or an officer of a provider of probation services (as the case may be) (s 69(4)(a), (9) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; Powers of Criminal Courts (Sentencing) Act 2000 s 69(4)(a) amended, s 69(9A) added, by SI 2008/912); repealed (see note 3));
- 223 (2) a social worker of a local authority (Powers of Criminal Courts (Sentencing) Act 2000 s 69(4)(b) (repealed; s 69(4)(b), (10) amended by the Children Act 2004 Sch 5 Pt 4)); and
- 224 (3) a member of a youth offending team (Powers of Criminal Courts (Sentencing) Act 2000 s 69(4)(c) (repealed)).

As to local probation boards and providers of probation services see PARA 733 et seq. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

Where an action plan order specifies an officer of a local probation board under s 69(4), the officer specified must be an officer appointed for or assigned to the local justice area named in the order (s 69(9) (as so amended and repealed)), and where an action plan order specifies an officer of a provider of probation services under s 69(4) the officer specified must be an officer acting in the local justice area named in the order (s 69(9A) (as so added and repealed)). Where an action plan order specifies under s 69(4) either a social worker of a local authority or a member of a youth offending team, the social worker or member specified must be a social worker of, or a member of a youth offending team established by, the local authority within whose area it appears to the court that the offender resides or will reside: s 69(10) (as so amended and repealed).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 69(1)(c) (repealed: see note 3). Any directions given by the responsible officer may include other authorised requirements under s 70 (see PARAS 244-245): s 69(1) (repealed).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 69(3)(a) (repealed: see note 3).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 69(3)(b) (repealed: see note 3).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 69(2) (repealed: see note 3).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 69(5)(a) (repealed: see note 3).

11 Ie under the Criminal Justice Act 2003 s 177 (see PARA 171).

12 See PARA 267 et seq.

13 See PARA 250 et seq.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 69(5)(b) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 104(1), (3); repealed (see note 3)). As to a referral order see PARA 344 et seq.

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243. Considerations.

Before making an action plan order¹ the court must obtain and consider:

- 781 (1) a written report by an officer of a local probation board, an officer of a provider of probation services², a social worker of a local authority or a member of a youth offending team³ indicating:
- 23
56. (a) the requirements proposed by that person to be included in the order⁴;
57. (b) the benefits to the offender that the proposed requirements are designed to achieve⁵; and
58. (c) the attitude of a parent or guardian of the offender to the proposed requirements⁶; and
- 24
- 782 (2) where the offender is aged under 16⁷, information about the offender's family circumstances and the likely effect of the order on those circumstances⁸.

The court may not make an action plan order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be named⁹ in the order and the notice has not been withdrawn¹⁰.

1 See PARA 242.

2 As to local probation boards and providers of probation services see PARA 733 et seq.

3 As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 69(6)(a)(i) (s 69(6)(a) amended by the Criminal Justice and Court Services Act 2000 Sch 7 para 4; and by SI 2008/912; Powers of Criminal Courts (Sentencing) Act 2000 s 69 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to community sentences generally see PARA 163 et seq.

5 Powers of Criminal Courts (Sentencing) Act 2000 s 69(6)(a)(ii) (repealed: see note 4). As to requirements see PARAS 242, 244-245.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 69(6)(a)(iii) (repealed: see note 4).

7 As to the age of an offender for sentencing purposes see PARA 27.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 69(6)(b) (repealed: see note 4).

9 An action plan order must name the local justice area in which it appears to the court making the order (or to the court amending under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 (see PARAS 247-249) any provision included in the order in pursuance of s 69(8)) that the offender resides or will reside: s 69(8) (amended by SI 2005/886; repealed (see note 4)).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 69(7) (repealed: see note 4).

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244. General requirements and directions.

Requirements included in an action plan order¹, or directions given by a responsible officer², may require the offender to do all or any of the following:

- 783 (1) to participate in activities specified in the requirements or directions at a time or times so specified³;
- 784 (2) to present himself to a person or persons specified in the requirements or directions at a place or places and at a time or times so specified⁴;
- 785 (3) to attend at an attendance centre specified in the requirements or directions for a number of hours so specified⁵;
- 786 (4) to stay away from a place or places specified in the requirements or directions⁶;
- 787 (5) to comply with any arrangements for his education specified in the requirements or directions⁷;
- 788 (6) to make reparation⁸ specified in the requirements or directions to a person or persons so specified or to the community at large⁹; and
- 789 (7) to attend any hearing fixed¹⁰ by the court¹¹.

Requirements included in an action plan order and directions given by a responsible officer must, as far as practicable, be such as to avoid:

- 790 (a) any conflict with the offender's religious beliefs or with the requirements of any other youth community order or any community order to which he may be subject¹²; and
- 791 (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment¹³.

1 See PARA 242.

2 As to the meaning of 'responsible officer' see PARA 242 note 5.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(a) (s 70 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to community sentences generally see PARA 163 et seq.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(b) (repealed: see note 3).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(c) (repealed: see note 3). This applies only where the offence committed by the offender is an offence punishable with imprisonment: s 70(2) (repealed).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(d) (repealed: see note 3).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(e) (repealed: see note 3).

8 'Make reparation', in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation: Powers of Criminal Courts (Sentencing) Act 2000 s 70(3) (repealed: see note 3).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(f) (repealed: see note 3). A person may not be specified in requirements or directions under head (6) in the text unless he is identified by the court or (as the case may be) the responsible officer as a victim of the offence or a person otherwise affected by it and consents to the reparation being made: s 70(4) (repealed).

10 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 71 (see PARA 246).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 70(1)(g) (repealed: see note 3).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 70(5)(a) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 105; repealed (see note 3)).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 70(5)(b) (repealed: see note 3).

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Requirements relating to drug treatment and testing.

245. Requirements relating to drug treatment and testing.

Where a court proposing to make an action plan order¹ is satisfied that the offender is dependent on, or has a propensity to misuse, drugs² and that his dependency or propensity is such as requires and may be susceptible to treatment³, requirements included in such an order may require the offender for a period specified in the order (the 'treatment period') to submit to treatment by or under the direction of a specified person having the necessary qualifications and experience (the 'treatment provider') with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs⁴. However such a requirement may not be so included:

- 792 (1) in any case, unless the court is satisfied that arrangements⁵ have been or can be made for the treatment intended to be specified in the order⁶ and the requirement has been recommended to the court as suitable for the offender by an officer of a local probation board, an officer of a provider of probation services⁷ or by a member of a youth offending team⁸; and
- 793 (2) in the case of an order made or to be made in respect of a person aged 14 or over⁹, unless he consents to its inclusion¹⁰.

An action plan order which includes such a requirement may, if the offender is aged 14 or over, also include a requirement (a 'testing requirement') that, for the purpose of ascertaining whether he has any drug in his body during the treatment period, the offender must during that period, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the responsible officer¹¹ or the treatment provider, provide samples of such description as may be so determined¹². However, a testing requirement may not be so included unless the offender is aged 14 or over and consents to its inclusion¹³ and the court has been notified by the Secretary of State that arrangements for implementing such requirements are in force in the area proposed to be specified in the order¹⁴.

1 See PARA 242.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4A)(a) (s 70(4A)-(4H) added by the Criminal Justice Act 2003 Sch 24 para 1; Powers of Criminal Courts (Sentencing) Act 2000 s 70 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to community sentences generally see PARA 163 et seq.

These provisions were brought into force only for the purposes of sentencing persons resident in certain areas (ie Bradford, Calderdale, Keighley, Manchester and Newham, and that part of Teesside petty sessions area that is coterminous with the borough of Middlesbrough), and do not have effect in those areas in relation to a person convicted of an offence before 1 December 2004: Criminal Justice Act 2003 (Commencement No 6 and Transitional Provisions) Order 2004, SI 2004/3033, art 2. It is submitted that the reference to a 'petty sessions area' is to be read as a reference to a local justice area. Where an offence is found to have been committed over a period of two or more days or at some time during that period, it is to be taken to have been committed on the last of those days: art 2.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4A)(b) (as added and repealed: see note 2).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4B) (as added and repealed: see note 2). As to requirements generally see PARA 244. The required treatment must be:

225 (1) treatment as a resident in such institution or place as may be specified in the order (s 70(4C)(a) (as so added and repealed)); or

226 (2) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified (s 70(4C)(b) (as so added and repealed)),

but the nature of the treatment may not be specified in the order except as mentioned in head (1) or head (2) above (s 70(4C) (as so added and repealed)).

5 le including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident: Powers of Criminal Courts (Sentencing) Act 2000 s 70(4D)(a)(i) (as added and repealed: see note 2).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4D)(a)(i) (as added and repealed: see note 2).

7 As to local probation boards and providers of probation services see PARA 733 et seq.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4D)(a)(ii) (as added and repealed (see note 2); amended by SI 2008/912). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

9 As to the age of an offender for sentencing purposes see PARA 27.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4D)(b) (as added and repealed: see note 2).

11 As to the meaning of 'responsible officer' see PARA 242 note 5.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4E) (as added and repealed: see note 2). A testing requirement must specify for each month the minimum number of occasions on which samples are to be provided: s 70(4G) (as so added and repealed). An action plan order including a testing requirement must provide for the results of tests carried out on any samples provided by the offender in pursuance of the requirement to a person other than the responsible officer to be communicated to the responsible officer: s 70(4H) (as so added and repealed).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4F)(a) (as added and repealed: see note 2).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 70(4F)(b) (as added and repealed: see note 2).

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246. Power to fix further hearings.

Immediately after making an action plan order¹, a court may:

- 794 (1) fix a further hearing for a date not more than 21 days after the making of the order²; and
- 795 (2) direct the responsible officer³ to make, at that hearing, a report as to the effectiveness of the order and the extent to which it has been implemented⁴.

At such a hearing, the court:

- 796 (a) must consider the responsible officer's report⁵; and
- 797 (b) may, on the application of the responsible officer or the offender, amend the order by cancelling any provision included in it⁶ or by inserting in it (either in addition to or in substitution for any of its provisions) any provision that the court could originally have included in it⁷.

1 See PARA 242.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 71(1)(a) (s 71 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to community sentences generally see PARA 163 et seq.

3 As to the meaning of 'responsible officer' see PARA 242 note 5.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 71(1)(b) (repealed: see note 2).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 71(2)(a) (repealed: see note 2).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 71(2)(b)(i) (repealed: see note 2).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 71(2)(b)(ii) (repealed: see note 2).

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247. Breach of requirement of action plan order.

If while an action plan order¹ is in force in respect of an offender it is proved to the satisfaction of the appropriate court², on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order³, the court:

- 798 (1) whether or not it also makes an order⁴ revoking or amending the action plan order, may:
- 25
59. (a) order the offender to pay a fine⁵;
60. (b) make a curfew order⁶ in respect of him⁷; or
61. (c) make an attendance centre order⁸ in respect of him⁹;
- 26
- 799 (2) if the action plan order was made by a magistrates' court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order¹⁰; or
- 800 (3) if the action plan order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court¹¹.

In dealing with an offender under these provisions a court must take into account the extent to which the offender has complied with the requirements of the action plan order¹².

These provisions have effect subject to the provision¹³ relating to the presence of the offender in court when an application¹⁴ is made by the appropriate officer¹⁵.

1 See PARA 242.

2 For these purposes 'appropriate court', in relation to an action plan order, means a youth court acting in the local justice area for the time being named in the order in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 s 69(8) (see PARA 243): Sch 8 para 1 (Sch 8 para 1 amended by SI 2005/886; Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 paras 1, 2(2)(a)(ii), (iii), 3, 4 repealed, Sch 8 para 2(1), (2)(b), (c), (7), 8 amended, Sch 8 para 6A added, as from 30 November 2009, by the Criminal Justice and Immigration Act 2008 s 6(2), (3), Sch 4 paras 51, 62(1), (4), (5), 106, 108(1)-(3), (6), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). The effect of the amendments referred to above is to remove all references to action plan orders from the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 pursuant to the replacement of youth community orders by youth rehabilitation orders, following which Sch 8 will apply only to reparation orders (see PARAS 385-387). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq. A youth court may adjourn any hearing relating to an offender in any proceedings under Sch 8, and where it does so the court may direct that the offender be released forthwith or remand the offender: Sch 8 para 6A(1), (2) (as so added). Where the court so remands the offender it must fix the time and place at which the hearing is to be resumed and that time and place must be the time and place at which the offender is required to appear or be brought

before the court by virtue of the remand, and where the court so adjourns the hearing but does not remand the offender it may fix the time and place at which the hearing is to be resumed but, if it does not do so, it must not resume the hearing unless it is satisfied that the offender, the responsible officer and (if the offender is aged under 14) either a parent or guardian of the offender or, if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, that authority, have had adequate notice of the time and place for the resumed hearing: Sch 8 para 6A(3)-(6) (as so added). These powers may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980: Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6A(8) (as so added). These provisions apply to any hearing in any proceedings under Sch 8 in place of the Magistrates' Courts Act 1980 s 10 (adjournment of trial: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 707, 711) where s 10 would otherwise apply, but do not affect the application of s 10 to hearings of any other description: Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6A(9) (as so added).

For these purposes 'local authority' has the same meaning as it has in the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8) by virtue of s 7 (see PARA 202 note 3); 'parental responsibility' has the same meaning as it has in the Children Act 1989 by virtue of s 3 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134); and 'social services functions' has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of s 1A (see **SOCIAL SECURITY AND PENSIONS**): Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6A(7) (as so added). As to the meaning of 'responsible officer' see PARA 242 note 5.

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(1) (as amended: see note 2).

4 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1) (see PARA 248).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(a)(i). The amount of the fine must not exceed £1,000: Sch 8 para 2(2)(a)(i). A fine imposed under Sch 8 para 2 is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: Sch 8 para 2(6).

The offender may appeal to the Crown Court against any order under Sch 8 para 2(2) except an order made or which could have been made in his absence by virtue of Sch 8 para 6(9) (see PARA 249): Sch 8 para 7(a).

6 As to curfew orders see PARA 231.

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(a)(ii) (repealed: see note 2). See note 5. Sections 36B, 37, 40, Sch 3 (see PARAS 230-231, 233-241) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of an action plan order: see Sch 8 para 3(1), (2), (5), (6) (Sch 8 para 3 amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 202(1), (2)(a); and the Criminal Justice Act 2003 Sch 32 paras 90, 129; repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a curfew order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 3(3) (as so amended and repealed).

8 See PARA 267 et seq.

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(a)(iii) (repealed: see note 2). See note 5. Sections 36B, 60(1), (3)-(11), Sch 5 (see PARAS 230, 267-268) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of an action plan order: see Sch 8 para 4(1), (2), (4) (repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to an attendance centre order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 4(3) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 129; repealed).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(b) (as amended: see note 2). See note 5. Unless the order in question was made on appeal, the proviso to the court's powers to deal with the offender under this provision is that it may deal with the offender in any way in which he could have been dealt with by the court which made the order if the order had not been made: Sch 8 para 2(2)(b), (8) (as so amended).

Where an action plan order has been made on appeal it is deemed:

227 (1) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court (Sch 8 para 2(8)(a) (as so amended)); and

228 (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (Sch 8 para 2(8)(b) (as so amended)).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(c) (as amended: see note 2). See note 5. As to bail generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1165-1201. Where a court deals with an offender under Sch 8 para 2(2)(c) it must send to the Crown Court a certificate signed by a justice of the peace giving particulars of the offender's failure to comply with the requirement in question (Sch 8 para 2(3)(a)) and such other particulars of the case as may be desirable (Sch 8 para 2(3)(b)). A certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court: Sch 8 para 2(3). Where by virtue of Sch 8 para 2(2)(c) the offender is brought or appears before the Crown Court (Sch 8 para 2(4)(a)) and it is proved to the satisfaction of the court that he has failed to comply with the requirement in question (Sch 8 para 2(4)(b)), that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence (Sch 8 para 2(4)). Unless the order in question was made on appeal, the proviso to the court's powers to deal with the offender under Sch 8 para 2(4) is that the court may deal with the offender in any way in which it could have dealt with him if it had not made the order: Sch 8 para 2(8) (as so amended). Where the Crown Court deals with an offender under Sch 8 para 2(4), it must revoke the action plan order or reparation order if it is still in force: Sch 8 para 2(5) (as so amended).

12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(7) (as amended: see note 2).

13 Ie the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6 (see PARA 249).

14 Ie an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(1) (see the text and notes 1-3) or Sch 8 para 5(1) (see PARA 248).

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(9).

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248. Revocation and amendment of action plan orders.

If while an action plan order¹ is in force in respect of an offender it appears to the appropriate court², on the application of the responsible officer³ or the offender, that it is appropriate to make an order revoking or amending the order, the court may:

- 801 (1) make an order revoking the order⁴; or
- 802 (2) make an order amending it by cancelling any provision included in it⁵, or by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power⁶.

1 See PARA 242.

2 As to the meaning of 'appropriate court' see PARA 247 note 2.

3 As to the meaning of 'responsible officer' see PARA 242 note 5.

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1)(a) (Sch 8 paras 5(1), (3), 6(7)(b) amended, as from 30 November 2009, by the Criminal Justice and Immigration Act 2008 s 6(2), (3), Sch 4 paras 51, 62(1), (7), (9), 106, 108(1), (4), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). The effect of the amendments referred to above is to remove all references to action plan orders from the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 pursuant to the replacement of youth community orders by youth rehabilitation orders, following which Sch 8 will apply only to reparation orders (see PARAS 385-387). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

Schedule 8 para 5(1) has effect subject to Sch 8 para 6 (see PARA 249); Sch 8 para 5(2). Where an application under Sch 8 para 5(1) for the revocation of an action plan order is dismissed, no further application for its revocation may be made thereunder by any person except with the consent of the appropriate court: Sch 8 para 5(3) (as so amended).

The offender may appeal to the Crown Court against:

- 229 (1) any order under Sch 8 para 5(1) except an order made or which could have been made in his absence by virtue of Sch 8 para 6(9) (see PARA 249) (Sch 8 para 7(a)); and
- 230 (2) the dismissal of an application under Sch 8 para 5(1) to revoke an action plan order (Sch 8 para 7(b) (as so amended)).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1)(b)(i) (as amended: see note 4). See note 4.

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1)(b)(ii) (as amended: see note 4). See note 4.

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249. Presence of offender in court.

Where the responsible officer¹ makes an application² to the appropriate court³ that the offender has failed to comply with any requirement included in an action plan order⁴, or makes an application⁵ that it is appropriate for the court to make an order revoking or amending the order, he may bring the offender before the court⁶. Without prejudice to any other power to issue a summons or warrant⁷, the court to which such an application is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it⁸.

Where the offender is arrested in pursuance of such a warrant⁹ and cannot be brought immediately before the appropriate court, the person in whose custody he is may make arrangements for his detention in a place of safety¹⁰ for a period of not more than 72 hours from the time of the arrest (and it is lawful for him to be detained in pursuance of the arrangements)¹¹, and must within that period bring him before a youth court¹².

Where an application is made to a court that it is appropriate for the court to make an order revoking or amending an action plan order¹³, the court may remand (or further remand) the offender to local authority accommodation if a warrant has been issued¹⁴ for the purpose of securing the attendance of the offender before the court¹⁵, or the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether, and, if so, how, to exercise its powers to revoke or amend the action plan order¹⁶.

A court remanding an offender to local authority accommodation¹⁷ must designate, as the authority which is to receive him, the local authority for the area in which the offender resides or, where it appears to the court that he does not reside in the area of a local authority, the local authority specified by the court¹⁸, and in whose area the offence or an offence associated with it was committed¹⁹.

1 As to the meaning of 'responsible officer' see PARA 242 note 5.

2 I.e. an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(1) (see PARA 247) or Sch 8 para 5(1) (see PARA 248).

3 As to the meaning of 'appropriate court' see PARA 247 note 2.

4 See PARA 242.

5 I.e. an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1) (see PARA 248).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(1) (Sch 8 para 6(1), (4), (5), (7), (9) amended, as from 30 November 2009, by the Criminal Justice and Immigration Act 2008 s 6(2), (3), Sch 4 paras 106, 108(1), (5), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). The effect of the amendments referred to above is to remove all references to action plan orders from the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 pursuant to the replacement of youth community orders by youth rehabilitation orders, following which Sch 8 will apply only to reparation orders (see PARAS 385-387). As to the abolition of the power to make action plan orders in respect of offences committed on or after 30 November 2009 see PARA 242 note 2. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

A court must not in general make an order under Sch 8 para 2(1) (see PARA 247) or Sch 8 para 5(1) (see PARA 248) unless the offender is present before the court (Sch 8 para 6(1) (as so amended)), although a court may make an order under Sch 8 para 5(1) in the absence of the offender if the effect of the order is confined to one or more of the following, that is to say:

- 231 (1) revoking the action plan order (Sch 8 para 6(9)(a) (as so amended));
- 232 (2) cancelling a requirement included in the order (Sch 8 para 6(9)(b) (as so amended));
- 233 (3) altering in the order the name of any area (Sch 8 para 6(9)(c) (as so amended)); or
- 234 (4) changing the responsible officer (Sch 8 para 6(9)(d) (as so amended)).

7 le apart from the power under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2) (see the text and note 8). As to the issue of summonses and warrants see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 912 et seq.

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2). The court must not begin to hear the complaint in the absence of the defendant or issue a warrant under the Magistrates' Courts Act 1980 s 55 unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons cannot be served or was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint: see s 55(3); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(3); and **MAGISTRATES** vol 29(2) (Reissue) PARAS 693, 701. Where the defendant fails to appear at an adjourned hearing, the court must not issue a warrant under the Magistrates' Courts Act 1980 s 55 unless it is satisfied that he has had adequate notice of the time and place of the adjourned hearing: see s 55(4); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(3); and **MAGISTRATES** vol 29(2) (Reissue) PARA 693.

9 le a warrant issued by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2) (see the text and notes 7-8).

10 As to the meaning of 'place of safety' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 608 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4)).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4)(a) (as amended: see note 6).

12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4)(b) (as amended: see note 6). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq. Where an offender is so brought before a youth court other than the appropriate court, the youth court may direct that he be released forthwith or remand him to local authority accommodation: Sch 8 para 6(5) (as amended: see note 6).

Until a day to be appointed where the offender is aged 18 or over at the time when he is brought before a youth court other than the appropriate court under Sch 8 para 6(4), or is aged 18 or over at a time when (apart from these provisions) the appropriate court could exercise its powers under Sch 8 para 6(6) (see the text and notes 13-16) in respect of him, he must not be remanded to local authority accommodation but may instead be remanded either to a remand centre (if the court has been notified that such a centre is available for the reception of persons under this provision) or to a prison (if it has not been so notified): Sch 8 para 6(7) (as amended: see note 6). As from a day to be appointed it is instead provided that such an offender may in such circumstances only be remanded to a prison: see the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(7) (as so amended; prospectively further amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 202(1), (3), Sch 8). At the date at which this volume states the law no such day had been appointed.

For these purposes 'local authority accommodation' means accommodation provided by or on behalf of a local authority; and 'accommodation provided by or on behalf of a local authority' has the same meaning as it has for the purposes of the Children Act 1989 by virtue of s 105 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 863): Powers of Criminal Courts (Sentencing) Act 2000 s 163.

13 le an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1) (see PARA 248).

14 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2) (see the text and notes 7-8).

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(6)(a).

16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(6)(b).

- 17 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6.
- 18 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(8)(a).
- 19 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(8)(b).

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D. SUPERVISION ORDERS

250. Effect of supervision order.

Where a child or young person¹ is convicted of an offence committed before 30 November 2009² the court by or before which he is convicted may³ make an order placing him under the supervision of:

- 803 (1) a local authority⁴ designated by the order⁵;
- 804 (2) an officer of a local probation board or an officer of a provider of probation services (as the case may be)⁶; or
- 805 (3) a member of the youth offending team⁷.

Such an order is referred to as a 'supervision order'⁸. While a supervision order is in force, the supervisor⁹ must advise, assist and befriend the offender¹⁰.

Unless it has previously been revoked, a supervision order ceases to have effect at the end of the period of three years or such shorter period as may be specified in the order, beginning with the date on which the order was originally made¹¹.

¹ ie a person aged under 18: see PARA 5 note 3. As to the age of an offender for sentencing purposes see PARA 27.

² The power to make supervision orders (which are youth community orders) was abolished in relation to offences committed on or after 30 November 2009 pursuant to the replacement of youth community orders by youth rehabilitation orders, but the provisions governing youth community orders continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date: see the Criminal Justice and Immigration Act 2008 Sch 27 para 1, Sch 28 Pt 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229. As to the meaning of 'youth community order' see PARA 229. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

³ ie subject to the Criminal Justice Act 2003 s 148 (see PARA 164), s 150 (see PARA 166) and s 156 (see PARA 617): Powers of Criminal Courts (Sentencing) Act 2000 s 63(1) (s 63(1) amended by the Criminal Justice Act 2003 Sch 32 paras 90, 103; Powers of Criminal Courts (Sentencing) Act 2000 ss 63, 66-68 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1 (see note 2)).

⁴ Unless the contrary intention appears, in the Powers of Criminal Courts (Sentencing) Act 2000 ss 63-66, Schs 6, 7 (see PARAS 250-266), 'local authority' means the council of a county or of a county borough, metropolitan district or London borough or the Common Council of the City of London: s 67(1) (repealed: see note 3). As to the counties in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq.

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 63(1)(a) (repealed: see note 3).

⁶ Powers of Criminal Courts (Sentencing) Act 2000 s 63(1)(b) (ss 63(1)(b), 64(2), 66(2) amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 4, 160, 174, 175; and by SI 2008/912; repealed (see note 3)). As to local probation boards and providers of probation services see PARA 733 et seq. The authority or authorities making any arrangements in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s

66(1) (facilities for implementing supervision orders: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1343) must consult each relevant local probation board and each relevant provider of probation services as to the arrangements: s 66(2) (as so amended and repealed).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 63(1)(c) (repealed: see note 3). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 63(2) (repealed: see note 3). Provision is made for the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 concerning supervision orders (ie ss 63-67, Schs 6, 7) to have effect, in their application to the Isles of Scilly, with specified modifications: see s 68 (repealed); the Children and Young Persons Act 1969 s 71; and the Isles of Scilly (Children and Young Persons) Order 1980, SI 1980/327.

9 For these purposes, 'supervisor', in relation to a supervision order, means the person under whose supervision the offender is placed or to be placed by the order: Powers of Criminal Courts (Sentencing) Act 2000 s 63(3) (repealed: see note 3). Where a provision of a supervision order places the offender under the supervision of an officer of a local probation board, the supervisor must be an officer of a local probation board appointed for or assigned to the local justice area named in the order in pursuance of s 63(6) (see PARA 251) (s 64(2) (as amended: see note 6)), and where a provision of a supervision order places the offender under the supervision of an officer of a provider of probation services, the supervisor must be an officer acting in the local justice area named in the order in pursuance of s 63(6) (s 64(2A) (added by SI 2008/912; repealed)). As to the selection and role of the supervisor see further the Powers of Criminal Courts (Sentencing) Act 2000 s 64(1), (3)-(5); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1342.

10 See the Powers of Criminal Courts (Sentencing) Act 2000 s 64(4); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1342.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 63(7) (repealed: see note 3). As to breach, revocation and amendment of supervision orders see Sch 7; PARAS 262-266; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1352-1357.

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251. Making a supervision order.

A court may not make a supervision order¹ unless it is satisfied that the offender resides² or will reside in the area of a local authority³; and a court is entitled to be satisfied that the offender will so reside if he is to be required so to reside by a provision to be included⁴ in the order⁵.

A supervision order:

- 806 (1) must name the area of the local authority and the local justice area in which it appears to the court making the order (or to the court amending⁶ any provision included in the order) that the supervised person resides or will reside⁷; and
- 807 (2) may contain such prescribed provisions⁸ as the court making the order or so amending it considers appropriate for facilitating the performance by the supervisor⁹ of his functions, including any prescribed provisions for requiring visits to be made by the offender to the supervisor¹⁰.

A court which makes a supervision order must forthwith send a copy of the order:

- 808 (a) to the offender and, if the offender is aged under 14, to his parent¹¹ or guardian¹²;
- 809 (b) to the supervisor¹³;
- 810 (c) to any local authority which is not entitled by virtue of head (b) above to such a copy and whose area is named in the supervision order in pursuance of head (1) above¹⁴;
- 811 (d) where the offender is required by the order to reside with an individual or to undergo treatment by or under the direction of an individual or at any place, to the individual or the person in charge of that place¹⁵; and
- 812 (e) where a local justice area named in the order in pursuance of head (1) above is not that in which the court acts, to the designated officer for the local justice area so named¹⁶,

and, in a case falling within head (e) above, it must also send to the designated officer in question such documents and information relating to the case as the court considers likely to be of assistance to him¹⁷.

If a court makes a supervision order while another such order made by any court is in force in respect of the offender, the court making the new order may revoke the earlier order¹⁸.

Nothing in the provisions relating to supervision orders¹⁹ prevents a court which makes a supervision order in respect of an offender from also making a curfew order²⁰ in respect of him²¹.

¹ See PARA 250.

² Unless the contrary intention appears, in the Powers of Criminal Courts (Sentencing) Act 2000 ss 63-66, Schs 6, 7 'reside' means habitually reside; and cognate expressions must (except in Sch 6 para 6(2), (3)) be construed accordingly: s 67(1) (ss 63, 64A, 67 repealed, as from 30 November 2009, by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that

date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. As to the meaning of 'responsible officer' in connection with a curfew order see PARA 231 note 15.

3 As to the meaning of 'local authority' see PARA 250 note 4.

4 le in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 1 (see PARA 252).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 63(5) (repealed: see note 2).

6 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 (see PARAS 262-266).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 63(6)(a) (s 63(6)(a), (8) amended, and s 63(8)(e) substituted, by SI 2005/886; repealed (see note 2)).

8 For these purposes, 'prescribed' means prescribed by the Criminal Procedure Rules: Powers of Criminal Courts (Sentencing) Act 2000 s 63(6) (amended by SI 2004/2035; repealed (see note 2)).

9 As to the meaning of 'supervisor' see PARA 250 note 9.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 63(6)(b) (repealed: see note 2).

11 In the case of a child or young person whose father and mother were not married to each other at the time of his birth, and with respect to whom a residence order is in force in favour of the father, any reference in the Powers of Criminal Courts (Sentencing) Act 2000 ss 63-66, Schs 6, 7 to the parent of the child or young person includes a reference to the father: s 67(2) (repealed: see note 2). In s 67(2), 'residence order' has the meaning given by the Children Act 1989 s 8(1) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 262) (Powers of Criminal Courts (Sentencing) Act 2000 s 67(3) (repealed)); and for this purpose s 67(2) is without prejudice to the operation of the Family Law Reform Act 1987 s 1(1) (construction of references to relationships: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 830) (Powers of Criminal Courts (Sentencing) Act 2000 s 67(3) (repealed)). As to the meanings of 'child' and 'young person' see PARA 5 note 3.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 63(8)(a) (repealed: see note 2).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 63(8)(b) (repealed: see note 2).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 63(8)(c) (repealed: see note 2).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 63(8)(d) (repealed: see note 2).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 63(8)(e) (as substituted and repealed: see notes 2, 7).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 63(8) (as amended and repealed: see notes 2, 7).

18 Powers of Criminal Courts (Sentencing) Act 2000 s 63(9) (repealed: see note 2). Schedule 7 para 10 (supplementary provisions: see PARA 263) applies to the revocation: s 63(9).

19 le the Powers of Criminal Courts (Sentencing) Act 2000 ss 63-72 (see PARA 250 et seq).

20 As to curfew orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 163; and PARA 231.

21 Powers of Criminal Courts (Sentencing) Act 2000 s 64A (added by the Anti-social Behaviour Act 2003 Sch 2 para 3; repealed (see note 2)).

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252. Residence requirements.

A supervision order¹ may require the supervised person to reside² with an individual named in the order who agrees to the requirement, but a requirement imposed by a supervision order is subject to any other authorised³ requirement⁴.

¹ See PARA 250.

² As to the meaning of 'reside' see PARA 251 note 2.

³ Ie any such requirement as is authorised by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2, 3, 6, 6A or 7: see PARAS 253-256, 259-261.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 1 (amended by the Criminal Justice Act 2003 Sch 24 para 2(1), (2); Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 1 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

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253. Compliance with supervisor's directions.

A supervision order¹ may² require the offender to comply with any directions given from time to time by the supervisor³ and requiring him to do all or any of the following⁴:

813 (1) to live at a place or places specified in the directions for a period or periods so specified⁵;

814 (2) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified⁶; and

815 (3) to participate in activities specified in the directions on a day or days so specified⁷.

It is for the supervisor to decide whether and to what extent he exercises any power to give directions so conferred on him⁸ and to decide the form of any directions⁹. Directions given by the supervisor by virtue of head (2) or head (3) above must, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs or with the requirements of any other youth community order or any community order to which he may be subject¹⁰, and any interference with the times, if any, at which he normally works or attends school or any other educational establishment¹¹.

1 See PARA 250.

2 The subject to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(2) (Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)), which provides that a supervision order may not require compliance with directions given by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1) (see the text and notes 3-7) unless the court making it is satisfied that a scheme under s 66 (facilities for implementing supervision orders: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1343) is in force for the area where the offender resides or will reside; and that no such directions may involve the use of facilities which are not for the time being specified in a scheme in force under s 66 for that area.

As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

3 As to the supervisor see PARA 250 note 9.

4 A requirement imposed by a supervision order in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1) (see the text and notes 5-7) is subject to any such requirement of the order as is authorised by Sch 6 para 6 (see PARA 259): Sch 6 para 2(3) (repealed: see note 2).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1)(a) (repealed: see note 2).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1)(b) (repealed: see note 2).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1)(c) (repealed: see note 2).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(4)(a) (repealed: see note 2). The total number of days in respect of which an offender may be required to comply with directions so given in pursuance of a supervision order may not exceed 180 or such lesser number, if any, as the order may specify for these purposes: Sch 6 para 2(5) (Sch 6 para 2(5) amended by the Anti-social Behaviour Act 2003 Sch 2 para

4(1), (2); repealed). For the purpose of calculating the total number of days in respect of which such directions may be given, the supervisor is entitled to disregard any day in respect of which directions were previously given in pursuance of the order and on which the directions were not complied with: Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(6) (repealed).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(4)(b) (repealed: see note 2). See note 8.

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(7)(a) (amended by the Criminal Justice Act 2003 Sch 32 para 127; repealed (see note 2)).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(7)(b) (repealed: see note 2).

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254. Compliance with requirements absent supervisor's directions.

Unless a supervision order¹ requires the offender to comply with directions given by the supervisor² it may³ require the offender⁴:

- 816 (1) to live at a place or places specified in the order for a period or periods so specified⁵;
- 817 (2) to present himself to a person or persons specified in the order at a place or places and on a day or days so specified⁶;
- 818 (3) to participate in activities specified in the order on a day or days so specified⁷;
- 819 (4) to make reparation⁸ specified in the order to a person or persons so specified or to the community at large⁹; and
- 820 (5) to refrain from participating in activities specified in the order on a specified day or days during the period for which the supervision order is in force¹⁰ or during the whole of that period or a specified portion of it¹¹.

¹ See PARA 250.

² ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1) (see PARA 253).

³ ie subject to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(3)-(9) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1346).

⁴ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(1), (2) (Sch 6 para 3(2), (3) amended by the Anti-social Behaviour Act 2003 Sch 2 para 4(1), (2); Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

Without prejudice to the power to include in a supervision order any other combination of requirements under different paragraphs of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 that is authorised by Sch 6, any power to include a requirement in a supervision order which is exercisable in relation to a person by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3 (see the text and notes 5-11; and PARAS 255-256) may be exercised in relation to him whether or not any other power is exercised: Sch 6 para 8 (repealed). See further PARA 255 (restrictions on requirements absent supervisor's directions) and PARA 256 (conditions for the inclusion of requirements absent supervisor's directions).

⁵ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2)(a) (repealed: see note 4). The total number of days in respect of which a supervised person may be subjected to requirements imposed by virtue of heads (a)-(d) in the text may not exceed 180: Sch 6 para 3(3) (as amended and repealed: see note 4).

⁶ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2)(b) (repealed: see note 4). See note 5. Requirements included in a supervision order by virtue of Sch 6 para 3(2)(b) or (c) must, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs or with the requirements of any other youth community order to which he may be subject (Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(6) (a) (amended by the Criminal Justice Act 2003 Sch 32 para 127; repealed)) and any interference with the times, if any, at which he normally works or attends school or any other educational establishment (Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(6)(b) (repealed)).

⁷ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2)(c) (repealed: see note 4). See notes 5, 6.

8 le otherwise than by the payment of compensation: Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2) (repealed: see note 4).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2)(d) (repealed: see note 4). See note 5.

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2)(f)(i) (repealed: see note 4).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2)(f)(ii) (repealed: see note 4).

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255. Restrictions on requirements absent supervisor's directions.

The court may not include in a supervision order¹ which does not require the offender to comply with the directions of a supervisor²:

- 821 (1) any requirement that would involve the co-operation of a person other than the supervisor and the offender unless that other person consents to its inclusion³;
- 822 (2) any requirement to make reparation to any person unless that person is identified by the court as a victim of the offence or a person otherwise affected by it⁴, and he consents to the inclusion of the requirement⁵;
- 823 (3) any requirement requiring the offender to reside with a specified individual⁶;
or
- 824 (4) any requirement⁷ as to mental treatment⁸.

A supervision order may not by virtue of these provisions⁹ include:

- 825 (a) any requirement that would involve the offender in absence from home for more than two consecutive nights¹⁰ or for more than two nights in any one week¹¹;
or
- 826 (b) if the offender is of compulsory school age¹², any requirement to participate in activities during normal school hours¹³,

unless the court making the order is satisfied that the facilities whose use would be involved are for the time being specified in a scheme in force¹⁴ for the area in which the offender resides or will reside¹⁵.

¹ See PARA 250.

² I.e. a supervision order which includes requirements by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2): see PARA 254. As to orders requiring compliance with supervisor's directions see PARA 253.

³ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(5)(a) (Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(5)(b)(i) (repealed: see note 3).

⁵ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(5)(b)(ii) (repealed: see note 3).

⁶ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(5)(c) (repealed: see note 3).

⁷ I.e. any such requirement as is mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(2) (see PARA 259).

⁸ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(5)(d) (repealed: see note 3).

- 9 le by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2): see note 2.
- 10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(7)(a)(i) (repealed: see note 3).
- 11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(7)(a)(ii) (repealed: see note 3).
- 12 As to the meaning of 'compulsory school age' see the Education Act 1996 s 8; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 15 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(9) (repealed: see note 3)).
- 13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(7)(b) (repealed: see note 3). Schedule 6 para 3(7)(b) does not apply to activities carried out in accordance with arrangements made or approved by the local education authority in whose area the offender resides or will reside: Sch 6 para 3(8) (repealed). As to the meaning of 'local education authority' see the Education Act 1996 s 8; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 (definitions applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(9) (repealed)).
- 14 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 66 (local authority schemes: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1343): Sch 6 para 3(7) (repealed: see note 3).
- 15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(7) (repealed: see note 3).

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256. Conditions for the inclusion of requirements absent supervisor's directions.

The court may not include requirements in a supervision order¹ which does not require the offender to comply with the directions of a supervisor² unless:

- 827 (1) it has first consulted the supervisor³ as to the offender's circumstances⁴ and the feasibility of securing compliance with the requirements⁵, and is satisfied, having regard to the supervisor's report, that it is feasible to secure compliance with them⁶;
- 828 (2) having regard to the circumstances of the case, it considers the requirements necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences⁷; and
- 829 (3) if the offender is under 16⁸, it has obtained and considered information about his family circumstances and the likely effects of the requirements on those circumstances⁹.

¹ See PARA 250.

² I.e. a supervision order which includes requirements by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(2); see PARA 254. As to orders requiring compliance with supervisor's directions see PARA 253.

³ As to the supervisor see PARA 250 note 9.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(4)(a)(i) (Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

⁵ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(4)(a)(ii) (repealed: see note 4).

⁶ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(4)(a) (repealed: see note 4).

⁷ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(4)(b) (repealed: see note 4).

⁸ As to the age of an offender for sentencing purposes see PARA 27.

⁹ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 3(4)(c) (repealed: see note 4).

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Requirement to live for specified period in local authority accommodation.

257. Requirement to live for specified period in local authority accommodation.

A supervision order¹ may impose a requirement (a 'local authority residence requirement') that the offender must live for a specified period in local authority accommodation² provided that:

- 830 (1) a supervision order has previously been made in respect of the offender³;
 - 831 (2) that order imposed either a specified requirement⁴ or a local authority residence requirement⁵;
 - 832 (3) the offender has failed to comply with that requirement, or is convicted of an offence committed while that order was in force⁶; and
 - 833 (4) the court is satisfied that:
- 27
- 62. (a) the failure to comply with the requirement, or the behaviour which constituted the offence, was due to a significant extent to the circumstances in which the offender was living⁷; and
 - 63. (b) the imposition of a local authority residence requirement will assist in his rehabilitation⁸.
- 28

A local authority residence requirement must designate the local authority⁹ which is to receive the offender, and that authority must be the authority in whose area the offender resides¹⁰. The court may not impose a local authority residence requirement without first consulting the designated authority¹¹. A local authority residence requirement may stipulate that the offender must not live with a named person¹². The maximum period which may be specified in a local authority residence requirement is six months¹³.

A court may not impose a local authority residence requirement in respect of an offender who is not legally represented at the relevant time¹⁴ in that court unless:

- 834 (i) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service for the purposes of the proceedings¹⁵ but the right was withdrawn because of his conduct or because it appeared that his financial resources were such that he was not eligible to be granted such a right¹⁶;
- 835 (ii) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible to be granted a right to it¹⁷; or
- 836 (iii) he has been informed of his right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply¹⁸.

A supervision order imposing a local authority residence requirement may also impose other requirements¹⁹.

1 See PARA 250.

- 2 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(1) (Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. As to the meaning of 'local authority accommodation' see PARA 249 note 13.
- 3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(2)(a) (repealed: see note 2).
- 4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(2)(b)(i) (repealed: see note 2). A 'specified requirement' is a requirement under Sch 6 para 1 (see PARA 252), Sch 6 para 2 (see PARA 253), Sch 6 para 3 (see PARAS 254-256), or Sch 6 para 7 (see PARA 261): Sch 6 para 5(2)(b)(i) (repealed).
- 5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(2)(b)(ii) (repealed: see note 2).
- 6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(2)(c) (repealed: see note 2).
- 7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(2)(d)(i) (repealed: see note 2).
- 8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(2)(d)(ii) (repealed: see note 2). This does not apply where the supervision order imposed a local authority residence requirement: Sch 6 para 5(2) (repealed).
- 9 As to the meaning of 'local authority' see PARA 250 note 4.
- 10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(3) (repealed: see note 2). As to the meaning of 'reside' see PARA 251 note 2.
- 11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(4) (repealed: see note 2).
- 12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(5) (repealed: see note 2).
- 13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(6) (repealed: see note 2).
- 14 Ie the time when the court is considering whether or not to impose the requirement: Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(8)(a) (repealed: see note 2).
- 15 Ie the whole proceedings (Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(8)(b)(i) (repealed: see note 2)) or the part of the proceedings relating to the imposition of the requirement (Sch 6 para 5(8)(b)(ii) (repealed)).
- 16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(7)(a) (Sch 6 para 5(7)(a) amended, Sch 6 para 5(7)(aa) added, by the Criminal Defence Service Act 2006 s 4(2), (3); repealed (see note 2)).
- 17 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(7)(aa) (as added and repealed: see notes 2, 16).
- 18 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(7)(b) (repealed: see note 2).
- 19 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5(9) (repealed: see note 2). The text refers to any of the requirements mentioned in Sch 6 para 2 (see PARA 253), Sch 6 para 3 (see PARAS 254-256), Sch 6 para 6 (see PARA 259) or Sch 6 para 7 (see PARA 261).

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Requirement to live for a specified period with local authority foster parent.

258. Requirement to live for a specified period with local authority foster parent.

A supervision order¹ may impose a requirement (a 'foster parent residence requirement') that the offender must live for a specified period with a local authority foster parent², provided that:

- 837 (1) the offence is punishable with imprisonment in the case of an offender aged 18 or over³;
- 838 (2) the offence, or the combination of the offence and one or more offences associated with it, was so serious that a custodial sentence would normally be appropriate (or, where the offender is aged 10 or 11, would normally be appropriate if the offender were aged 12 or over)⁴; and
- 839 (3) the court is satisfied that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living⁵ and the imposition of a foster parent residence requirement will assist in his rehabilitation⁶.

A foster parent residence requirement must designate the local authority which is to place⁷ the offender with a local authority foster parent, and that authority must be the authority in whose area the offender resides⁸.

A court may not impose a foster parent residence requirement unless:

- 840 (a) the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the designated authority⁹;
- 841 (b) the notice has not been withdrawn¹⁰; and
- 842 (c) the court has consulted the designated authority¹¹.

The maximum period which may be specified in a foster parent residence requirement is 12 months¹².

A court may not impose a foster parent residence requirement in respect of an offender who is not legally represented at the relevant time¹³ in that court unless:

- 843 (i) he was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service for the purposes of the proceedings¹⁴ but the right was withdrawn because of his conduct or because it appeared that his financial resources were such that he was not eligible to be granted such a right¹⁵;
- 844 (ii) he applied for such representation and the application was refused because it appeared that his financial resources were such that he was not eligible to be granted a right to it¹⁶; or
- 845 (iii) he has been informed of his right to apply for such representation for the purposes of the proceedings and has had opportunity to do so, but nevertheless refused or failed to apply¹⁷.

A supervision order imposing a foster parent residence requirement may also impose certain other requirements¹⁸.

If at any time while a supervision order imposing a foster parent residence requirement is in force, the supervisor notifies the offender:

- 846 (A) that no suitable local authority foster parent is available¹⁹; and
- 847 (B) that the supervisor has applied or proposes to apply²⁰ for the variation or revocation of the order²¹,

the foster parent residence requirement must, until the determination of the application, be taken to require the offender to live in local authority accommodation²².

1 See PARA 250.

2 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(1) (Sch 6 para 5A added by the Anti-social Behaviour Act 2003 Sch 2 para 4(1), (5); Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. 'Local authority foster parent' has the same meaning as in the Children Act 1989 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 900); Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(11) (as so added and repealed). Schedule 6 para 5A does not affect the power of a local authority to place with a local authority foster parent an offender to whom a local authority residence requirement under Sch 6 para 5 (see PARA 257) relates: Sch 6 para 5A(10) (as so added and repealed). As to the meaning of 'local authority' see PARA 250 note 4.

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(2)(a) (as added and repealed: see note 2). As to the age of an offender for sentencing purposes see PARA 27.

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(2)(b) (as added and repealed: see note 2).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(2)(c)(i) (as added and repealed: see note 2).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(2)(c)(ii) (as added and repealed: see note 2).

7 Ie under the Children Act 1989 s 23(2)(a) or, as from a day to be appointed, s 22C (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 877).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(3) (as added and repealed (see note 2); prospectively amended by the Children and Young Persons Act 2008 Sch 1 para 10). At the date at which this volume states the law no day had been appointed for the coming into force of the amendment made by the Children and Young Persons Act 2008.

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(4)(a) (as added and repealed: see note 2).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(4)(b) (as added and repealed: see note 2).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(4)(c) (as added and repealed: see note 2).

12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(5) (as added and repealed: see note 2). This is subject to the power under Sch 7 para 5(2A) (see PARA 263) to extend the period specified in the order to a period of not more than 18 months beginning with the day on which the requirement first had effect: Sch 6 para 5A(5) (as so added and repealed).

13 Ie the time when the court is considering whether or not to impose the requirement: Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(7)(a) (as added and repealed: see note 2).

14 le the whole proceedings (Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(7)(b)(i) (as added and repealed: see note 2)) or the part of the proceedings relating to the imposition of the requirement (Sch 6 para 5A(7)(b)(ii) (as so added and repealed)).

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(6)(a) (as added and repealed (see note 2); Sch 6 para 5A(6)(a) amended, Sch 6 para 5A(6)(aa) added, by the Criminal Defence Service Act 2006 s 4(2), (3)).

16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(6)(aa) (as added and repealed: see notes 2, 16).

17 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(6)(b) (as added and repealed: see note 2).

18 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(8) (as added and repealed: see note 2). The text refers to any of the requirements mentioned in Sch 6 para 2 (see PARA 253), Sch 6 para 3 (see PARAS 254-256), Sch 6 para 6 (see PARA 259) or Sch 6 para 7 (see PARA 261).

19 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(9)(a) (as added and repealed: see note 2).

20 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5 (see PARA 263).

21 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(9)(b) (as added and repealed: see note 2).

22 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 5A(9) (as added and repealed: see note 2). As to the meaning of 'local authority accommodation' see PARA 249 note 13.

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Requirements as to treatment for mental condition.

259. Requirements as to treatment for mental condition.

Where a court which proposes to make a supervision order¹ is satisfied, on the evidence of an approved medical practitioner², that the mental condition of the offender is such³ as requires and may be susceptible to treatment⁴ but is not such as to warrant the making of a hospital order⁵ or guardianship order⁶, the court may include in the supervision order a requirement that the offender must, for a period specified in the order, submit to treatment of any one of the following descriptions so specified:

- 848 (1) treatment as a resident patient in an independent hospital or care home⁷ or a hospital⁸, but not a hospital at which high security psychiatric services⁹ are provided¹⁰;
- 849 (2) treatment as a non-resident patient at an institution or place specified in the order¹¹;
- 850 (3) treatment by or under the direction of a registered medical practitioner specified in the order¹²; or
- 851 (4) treatment by or under the direction of a registered psychologist¹³ specified in the order¹⁴.

A requirement may not, however, be so included in a supervision order:

- 852 (a) in any case, unless the court is satisfied that arrangements have been or can be made for the treatment in question and, in the case of treatment as a resident patient, for the reception of the patient¹⁵; and
- 853 (b) in the case of an order made or to be made in respect of a person aged 14 or over, unless he consents to its inclusion¹⁶,

and a requirement so included may not in any case continue in force after the offender becomes 18¹⁷.

¹ See PARA 250.

² ie a registered medical practitioner approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 482-484).

³ The provisions of the Mental Health Act 1983 s 54(2), (3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492) have effect with respect to proof for these purposes of an offender's mental condition as they have effect with respect to an offender's mental condition for the purposes of s 37(2)(a) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491): Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(4) (Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(1)(a) (repealed: see note 3).

5 As to the meaning of 'hospital order' see the Mental Health Act 1983 s 37; and PARA 332 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(1)(b) (repealed: see note 3)).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(1)(b). As to the meaning of 'guardianship order' see the Mental Health Act 1983 s 37; and PARA 332 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(1)(b) (repealed: see note 3)).

7 le within the meaning of the Care Standards Act 2000 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 421, 430).

8 le a hospital within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 417).

9 le within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 418).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(2)(a) (amended by the Care Standards Act 2000 Sch 4 para 28(1), (3); repealed (see note 3)). Without prejudice to the power to include in a supervision order any other combination of requirements under different paragraphs of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 that is authorised by Sch 6, any power to include a requirement in a supervision order which is exercisable in relation to a person by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6 may be exercised in relation to him whether or not any other power is exercised: Sch 6 para 8 (repealed).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(2)(b) (repealed: see note 3).

12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(2)(c) (repealed: see note 3).

13 le a person registered in the part of the register maintained under the Health Professions Order 2001, SI 2002/254, which relates to practitioner psychologists: Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(5) (amended by SI 2009/1182; repealed).

14 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(2)(d) (amended by SI 2009/1182; repealed (see note 3)).

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(3)(a) (repealed: see note 3).

16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(3)(b) (repealed: see note 3).

17 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(3) (repealed: see note 3).

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Requirement as to drug treatment and testing.

260. Requirement as to drug treatment and testing.

Where a court proposing to make a supervision order¹ is satisfied:

- 854 (1) that the offender is dependent on, or has a propensity to misuse, drugs²; and
- 855 (2) that his dependency or propensity is such as requires and may be susceptible to treatment³,

the court may include in the supervision order a requirement that the offender must, for a period specified in the order (the 'treatment period'), submit to treatment by or under the direction of a specified person having the necessary qualifications and experience (the 'treatment provider') with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs⁴. The required treatment must be:

- 856 (a) treatment as a resident in such institution or place as may be specified in the order⁵; or
- 857 (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified⁶,

but the nature of the treatment must not be specified in the order except as mentioned in head (a) or head (b) above⁷.

A requirement may not be so included in a supervision order:

- 858 (i) in any case, unless:
29
 - 64. (A) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident)⁸; and
 - 65. (B) the requirement has been recommended to the court as suitable for the offender by an officer of a local probation board, an officer of a provider of probation services⁹ or a member of a youth offending team¹⁰; and
- 30 859 (ii) in the case of an order made or to be made in respect of a person aged 14 or over, unless he consents to its inclusion¹¹.

A supervision order which includes a treatment requirement may also include a requirement (a 'testing requirement') that, for the purpose of ascertaining whether he has any drug in his body during the treatment period, the offender must during that period, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the supervisor¹² or the treatment provider, provide samples of such description as may be so determined¹³. However, a testing requirement may not be so included in a supervision order unless the offender is aged 14 or over and consents to its inclusion¹⁴, and the court has been notified by the Secretary of State that arrangements for implementing such requirements are in force in the area proposed to be specified in the order¹⁵.

1 See PARA 250.

2 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(1)(a) (Sch 6 para 6A added by the Criminal Justice Act 2003 Sch 24 para 2(1), (3); Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. At the date at which this volume states the law the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A had been brought into force only for the purposes of sentencing persons resident in certain areas (ie Bradford, Calderdale, Keighley, Manchester and Newham, and that part of Teesside petty sessions area that is coterminous with the borough of Middlesbrough), and do not have effect in those areas in relation to a person convicted of an offence before 1 December 2004: Criminal Justice Act 2003 (Commencement No 6 and Transitional Provisions) Order 2004, SI 2004/3033, art 2. It is submitted that the reference to a 'petty sessions area' is to be read as a reference to a local justice area. Where an offence is found to have been committed over a period of two or more days or at some time during that period, it is to be taken to have been committed on the last of those days: art 2.

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(1)(b) (as added and repealed: see note 2).

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(2) (as added and repealed: see note 2).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(3)(a) (as added and repealed: see note 2).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(3)(b) (as added and repealed: see note 2).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(3) (as added and repealed: see note 2).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(4)(a)(i) (as added and repealed: see note 2).

9 As to local probation boards and providers of probation services see PARA 733 et seq.

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(4)(a)(ii) (as added and repealed (see note 2); amended by SI 2008/912). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(4)(b) (as added and repealed: see note 2).

12 As to the meaning of 'supervisor' see PARA 250 note 9.

13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(5) (as added and repealed: see note 2). A testing requirement must specify for each month the minimum number of occasions on which samples are to be provided: Sch 6 para 6A(7) (as so added and repealed). A supervision order including a testing requirement must provide for the results of tests carried out on any samples provided by the offender in pursuance of the requirement to a person other than the supervisor to be communicated to the supervisor: Sch 6 para 6A(8) (as added and repealed: see note 2).

14 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(6)(a) (as added and repealed: see note 2).

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A(6)(b) (as added and repealed: see note 2).

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261. Requirements as to education.

Unless a supervision order¹ requires the offender to comply with directions² given by the supervisor³ it may require the offender, if he is of compulsory school age⁴, to comply, for as long as he is of that age and the order remains in force, with such arrangements for his education as may from time to time be made by his parent⁵, being arrangements for the time being approved by the local education authority⁶.

The court may not include such a requirement in a supervision order unless:

- 860 (1) it has consulted the local education authority with regard to its proposal to include the requirement⁷ and is satisfied that, in the view of the local education authority, arrangements exist for the offender to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational need⁸ he may have⁹;
- 861 (2) it has first consulted the supervisor as to the offender's circumstances and, having regard to the circumstances of the case, it considers the requirement necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences¹⁰.

1 See PARA 250.

2 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 2(1) (see PARA 253).

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(1) (Sch 6 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. As to the meaning of 'supervisor' see PARA 250 note 9.

4 As to the meaning of 'compulsory school age' see the Education Act 1996 s 8; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 15 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(4) (repealed: see note 3)).

5 As to the meaning of 'parent' see the Education Act 1996 s 576(1); and **EDUCATION** vol 15(1) (2006 Reissue) PARA 510 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(4) (repealed: see note 3)).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(2) (repealed: see note 3). As to the meaning of 'local education authority' see the Education Act 1996 s 12; and **EDUCATION** vol 15(1) (2006 Reissue) PARA 20 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(4) (repealed)). Without prejudice to the power to include in a supervision order any other combination of requirements under different paragraphs of Sch 6 that is authorised by Sch 6, any power to include a requirement in a supervision order which is exercisable in relation to a person by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7 may be exercised in relation to him whether or not any other power is exercised: Sch 6 para 8 (repealed).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(3)(a) (repealed: see note 3).

8 As to the meaning of 'special educational need' see the Education Act 1996 s 312(1); and **EDUCATION** vol 15(2) (2006 Reissue) PARA 984 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(4) (repealed: see note 3)).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(3)(b) (repealed: see note 3).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 7(5) (repealed: see note 3).

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262. Breach of requirement of supervision order.

If while a supervision order¹ is in force in respect of an offender it is proved to the satisfaction of a relevant court², on the application of the supervisor³, that the offender has failed to comply with any requirement included⁴ in the supervision order⁵, the court:

- 862 (1) whether or not it also makes an order revoking or amending the supervision order⁶, may:
- 31
66. (a) order the offender to pay a fine⁷;
67. (b) make a curfew order⁸ in respect of him⁹; or
68. (c) make an attendance centre order¹⁰ in respect of him¹¹;
- 32
- 863 (2) if the supervision order was made by a magistrates' court¹², may revoke the supervision order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order¹³; or
- 864 (3) if the supervision order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court¹⁴.

In dealing with an offender under the provisions relating to breach of a requirement of a supervision order¹⁵, a court must take into account the extent to which he has complied with the requirements of the supervision order¹⁶.

1 See PARA 250.

2 For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7, 'relevant court', in relation to a supervision order, means:

235 (1) where the offender is under the age of 18, a youth court acting in the local justice area for the time being named in the order in pursuance of s 63(6) (see PARA 251) (Sch 7 para 1(1)(a) (Sch 7 para 1(1)(a), (b) amended by SI 2005/886; Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)); and

236 (2) where the offender has attained that age, a magistrates' court other than a youth court, being a magistrates' court acting in the local justice area for the time being so named (Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 1(1)(b) (as so amended and repealed)).

As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. If an application to a youth court is made in pursuance of Sch 7 and while it is pending the offender to whom it relates attains the age of 18, the youth court must deal with the application as if he had not attained that age: Sch 7 para 1(2) (repealed). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

3 As to the meaning of 'supervisor' see PARA 250 note 9.

4 Ie included in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 1 (see PARA 252), Sch 6 para 2 (see PARA 253), Sch 6 para 3 (see PARAS 254-256), Sch 6 para 5 (see PARA 257), Sch 6 para 5A (see PARA 258), Sch 6 para 6A (see PARA 260), Sch 6 para 7 (see PARA 261), or s 63(6)(b) (see PARA 251): Sch 7 para 2(1) (Sch 7 para 2(1), (2)(a)(ii) amended, and Sch 7 para 2(2A) added, by the Anti-social Behaviour Act 2003 Sch 2 para 6(1), (2); Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(1) also amended by the Criminal Justice Act 2003 Sch 24 para 3; Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 repealed (see note 2)). At the date at which this volume states the law the reference to the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6A had been brought into force only for the purposes of sentencing persons resident in certain areas (ie Bradford, Calderdale, Keighley, Manchester and Newham, and that part of Teesside petty sessions area that is coterminous with the borough of Middlesbrough), and does not have effect in those areas in relation to a person convicted of an offence before 1 December 2004: Criminal Justice Act 2003 (Commencement No 6 and Transitional Provisions) Order 2004, SI 2004/3033, art 2. It is submitted that the reference to a 'petty sessions area' is to be read as a reference to a local justice area. Where an offence is found to have been committed over a period of two or more days or at some time during that period, it is to be taken to have been committed on the last of those days: art 2. Note that the commission of an offence by a person subject to a supervision order is not a breach and cannot lead to the revocation of the order other than pursuant to the procedure set out in PARA 263.

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(1) (as amended and repealed: see notes 2, 4). Subject to Sch 7 para 7(9) (see PARA 265) a court must not make an order under Sch 7 para 2(1) unless the offender is present before the court: Sch 7 para 7(1) (repealed).

6 Ie an order under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see PARA 263).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(2)(a)(i) (repealed: see note 2). The amount of the fine must not exceed £1,000: Sch 7 para 2(2)(a)(i) (repealed). A fine imposed under Sch 7 para 2 is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: Sch 7 para 2(6) (repealed).

8 As to curfew orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 s 163) see PARA 231 et seq.

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(2)(a)(ii) (as amended and repealed: see notes 2, 4). However, the court may not make a curfew order under Sch 7 para 2(2)(a)(ii) in respect of an offender who is already subject to a curfew order: Sch 7 para 2(2A) (as so added and repealed). Sections 36B, 37, 40, Sch 3 (see PARAS 230-231, 233-241) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of a supervision order: see Sch 7 para 3(1), (2), (5), (6) (Sch 7 para 3 amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 201(1), (2)(a); and the Criminal Justice Act 2003 Sch 32 paras 90, 128; repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a supervision order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 3(3) (as so amended and repealed).

10 As to attendance centre orders (ie as defined by the Powers of Criminal Courts (Sentencing) Act 2000 s 60) see PARA 267 et seq.

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(2)(a)(iii) (repealed: see note 2). Section 60(1), (3)-(11), Sch 5 (see PARAS 164, 230, 268-269) apply with modifications where a court has power to deal with an offender under these provisions for failure to comply with any of the requirements of a supervision order: see Sch 7 para 4(1), (2), (4) (repealed). The Criminal Justice Act 2003 s 148 (restrictions on imposing community sentences: see PARA 164) and s 156 (procedural requirements for community sentences: see PARA 617) do not apply in relation to a supervision order made by virtue of these provisions: Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 4(3) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 128; repealed).

12 Where a supervision order has been made on appeal it is deemed:

237 (1) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court (Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(8)(a) (repealed: see note 2)); and

238 (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (Sch 7 para 2(8)(b) (repealed)).

13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(8)(a) (repealed: see note 2). Unless the order in question was made on appeal (see note 12), the proviso to the court's powers to deal with the offender

under this provision is that it may deal with the offender in any way in which he could have been dealt with by the court which made the order if the order had not been made: Sch 7 para 2(2)(b), (8) (repealed).

14 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(2)(c) (repealed: see note 2). As to bail generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1165-1201. Where a court deals with an offender under Sch 7 para 2(2)(c) it must send to the Crown Court a certificate signed by a justice of the peace giving particulars of the offender's failure to comply with the requirement in question (Sch 7 para 2(3)(a) (repealed)) and such other particulars of the case as may be desirable (Sch 7 para 2(3)(b) (repealed)). A certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court: Sch 7 para 2(3) (repealed). Where by virtue of Sch 7 para 2(2)(c) the offender is brought or appears before the Crown Court (Sch 7 para 2(4)(a) (repealed)) and it is proved to the satisfaction of the court that he has failed to comply with the requirement in question (Sch 7 para 2(4)(b) (repealed)), that court may deal with him, for the offence in respect of which the supervision order was made, in any way in which it could have dealt with him for that offence (subject to the proviso, unless the order in question was made on appeal, that the court may deal with the offender in any way in which he could have been dealt with by the court which made the order if it had not made the order) (Sch 7 para 2(2)(b), (4), (8) (repealed)). Where the Crown Court so deals with an offender, it must revoke the supervision order if it is still in force: Sch 7 para 2(5) (repealed).

15 In the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2.

16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(7) (repealed: see note 2).

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263. Revocation and amendment of supervision order.

If while a supervision order¹ is in force in respect of an offender it appears to a relevant court², on the application of the supervisor³ or the offender, that it is appropriate to make an order revoking or amending the supervision order, the court may⁴:

- 865 (1) make an order revoking the supervision order⁵; or
- 866 (2) make an order amending it either by cancelling any requirement included⁶ in it⁷ or by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power⁸.

The powers of amendment so conferred do not include power to insert in the supervision order, after the end of three months beginning with the date when the order was originally made, a requirement for treatment for a mental condition⁹, unless it is in substitution for such a requirement already included in the order¹⁰.

Where an application¹¹ for the revocation of a supervision order is dismissed, no further application for its revocation may be made¹² by any person during the period of three months beginning with the date of the dismissal except with the consent of a court having jurisdiction to entertain such an application¹³.

If a medical practitioner by whom or under whose direction an offender is being treated for his mental condition in pursuance of a requirement included in a supervision order¹⁴ is unwilling to continue to treat or direct the treatment of the offender¹⁵ or is of the opinion that¹⁶:

- 867 (a) the treatment of the offender should be continued beyond the period specified in that behalf in the order¹⁷;
- 868 (b) the offender needs different treatment¹⁸;
- 869 (c) the offender is not susceptible to treatment¹⁹; or
- 870 (d) the offender does not require further treatment²⁰,

the practitioner must make a report in writing to that effect to the supervisor²¹. On receiving such a report the supervisor must refer it to a relevant court, and on such a reference the court may make an order cancelling or varying the requirement²².

A court which makes an order amending or revoking a supervision order must forthwith send a copy of its order:

- 871 (i) to the offender and, if the offender is aged under 14, to his parent²³ or guardian²⁴;
- 872 (ii) to the supervisor and any person who has ceased to be the supervisor by virtue of the order²⁵;
- 873 (iii) to any local authority²⁶ which is not entitled by virtue of head (ii) above to such a copy and whose area is named in the supervision order or has ceased to be so named by virtue of the court's order²⁷;

- 874 (iv) where the offender is required by the order, or was required by the supervision order before it was amended or revoked, to reside²⁸ with an individual or to undergo treatment by or under the direction of an individual or at any place, to the individual or the person in charge of that place²⁹; and
- 875 (v) where a local justice area named in the order or revoked order is not that for which the court acts, to the designated officer for the local justice area so named³⁰.

1 See PARA 250.

2 As to the meaning of 'relevant court' see PARA 262 note 2.

3 As to the meaning of 'supervisor' see PARA 250 note 9.

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (Sch 7 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

Subject to Sch 7 para 7(9) (see PARA 265) a court must not make an order under Sch 7 para 5(1) unless the offender is present before the court: Sch 7 para 7(1) (repealed). Schedule 7 para 5(1) has effect subject to Sch 7 paras 7-9 (see PARAS 264-265): Sch 7 para 5(2) (repealed). Without prejudice to any power apart from Sch 7 para 12(1) to bring proceedings on behalf of another person, any power to make an application which is exercisable by a child or young person by virtue of Sch 7 para 5(1) is also exercisable on his behalf by his parent or guardian: Sch 7 para 12(1) (repealed). For the purposes of Sch 7 para 12, 'guardian' includes any person who was a guardian of the child or young person in question at the time when any supervision order to which the application relates was originally made: Sch 7 para 12(2) (repealed). As to the meanings of 'child' and 'young person' see PARA 5 note 3. As to the restrictions on a court's powers to revoke or amend a supervision order see PARA 264.

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1)(a) (repealed: see note 4).

6 Ie in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 (see PARAS 252-261) or s 63(6)(b) (see PARA 251).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1)(b)(i) (repealed: see note 4).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1)(b)(ii) (repealed: see note 4). In relation to a supervision order imposing a foster parent residence requirement under Sch 6 para 5A (see PARA 258), the power conferred by Sch 7 para 5(1)(b)(ii) includes power to extend the period specified in the requirement to a period of not more than 18 months beginning with the day on which the requirement first had effect: Sch 7 para 5(2A) (added by the Anti-social Behaviour Act 2003 Sch 2 para 6(1), (3)(a); repealed).

9 Ie in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6 (see PARA 259).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(3)(a) (repealed: see note 4).

11 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see the text and notes 1-8).

12 See note 11.

13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(4) (repealed: see note 4).

14 See note 9.

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(1)(a) (repealed: see note 4).

16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(1)(b) (repealed: see note 4).

17 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(2)(a) (repealed: see note 4).

18 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(2)(b) (repealed: see note 4).

- 19 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(2)(c) (repealed: see note 4).
- 20 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(2)(d) (repealed: see note 4).
- 21 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(1) (repealed: see note 4).
- 22 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(3) (repealed: see note 4). Schedule 7 para 6(3) has effect subject to Sch 7 paras 7-9 (see PARA 265); Sch 7 para 6(4) (repealed). Subject to Sch 7 para 7(9) (see PARA 265) a court must not make an order under Sch 7 para 6(3) unless the offender is present before the court: Sch 7 para 7(1) (repealed).
- 23 As to the meaning of 'parent' see PARA 251 note 11.
- 24 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 10(a) (repealed: see note 4).
- 25 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 10(b) (repealed: see note 4).
- 26 As to the meaning of 'local authority' see PARA 250 note 4.
- 27 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 10(c) (repealed: see note 4).
- 28 As to the meaning of 'reside' see PARA 251 note 2.
- 29 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 10(d) (repealed: see note 4).
- 30 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 10(e) (substituted by SI 2005/886; repealed (see note 4)). In a case falling within Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 10(e) the court must also send to the designated officer in question such documents and information relating to the case as the court considers likely to be of assistance to him: Sch 7 para 10 (amended by SI 2005/886; repealed).

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264. Restrictions on court's powers to revoke or amend supervision orders.

A youth court¹ may not:

- 876 (1) exercise its powers² to make an order revoking a supervision order³, inserting in a supervision order an authorised requirement⁴, or varying or cancelling such a requirement⁵, except in a case where the court is satisfied that the offender either is unlikely to receive the care or control⁶ he needs unless the court makes the order or is likely to receive it notwithstanding the order⁷;
- 877 (2) exercise its powers to make an order cancelling or varying a requirement relating to treatment for the offender's mental condition⁸ except in such a case as is mentioned in head (1) above⁹; or
- 878 (3) exercise its powers¹⁰ to make an order inserting an authorised requirement¹¹ in a supervision order which does not already contain such a requirement, unless the court is satisfied that the offender's mental condition is treatable and does not warrant the making of a hospital or guardianship order¹² on such evidence as is there mentioned¹³.

Where the offender has attained the age of 14, then except with his consent a court must not make an order that revokes or amends a supervision order¹⁴ or cancels or varies a requirement¹⁵, and which contains provisions which insert in the supervision order an authorised requirement¹⁶ or which alter such a requirement already included in the supervision order otherwise than by removing it or reducing its duration¹⁷.

1 As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

2 ie its powers under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see PARA 263).

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8(1)(a)(i) (Sch 7 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to supervision orders see PARA 250. As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8(1)(a)(ii) (repealed: see note 3). The text refers to a requirement authorised by Sch 6 (see PARAS 252-261).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8(1)(a)(iii) (repealed: see note 3).

6 For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8, 'care' includes protection and guidance; and 'control' includes discipline: Sch 7 para 8(2) (repealed: see note 3).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8(1)(a) (repealed: see note 3).

8 ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(3) (see PARA 263).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8(1)(b) (repealed: see note 3).

- 10 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see PARA 263).
- 11 le a requirement authorised by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6 (see PARA 259).
- 12 le satisfied as mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6(1) (see PARA 259).
- 13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 8(1)(c) (repealed: see note 3).
- 14 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see PARA 263).
- 15 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 6(3) (see PARA 263).
- 16 le a requirement authorised by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 6 para 6 (see PARA 259).
- 17 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 9(a), (b) (repealed: see note 3).

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265. Presence of offender in court.

Where the supervisor¹ makes an application or reference² to a court he may bring the offender before the court³. Without prejudice to any other power to issue a summons or warrant⁴, a justice may issue a summons or warrant for the purpose of securing the attendance of an offender before the court to which an application or reference in respect of him is made⁵. Where the offender is arrested in pursuance of such a warrant and cannot be brought immediately before the appropriate court⁶, the person in whose custody he is may make arrangements for his detention in a place of safety⁷ for a period of not more than 72 hours from the time of the arrest (and it is lawful for him to be detained in pursuance of the arrangements)⁸, and must within that period, unless within it the offender is brought before that appropriate court, bring him before a justice⁹.

Where an application is made to a youth court¹⁰ the court may remand (or further remand) the offender to local authority accommodation if a warrant has been issued¹¹ for the purpose of securing the attendance of the offender before the court¹² or the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether, and, if so, how, to exercise its powers to revoke or amend the supervision order¹³.

1 As to the meaning of 'supervisor' see PARA 250 note 9.

2 I.e. under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 2(1) (see PARA 262), Sch 7 para 5(1) (see PARA 263) or Sch 7 para 6(3) (see PARA 263).

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(1) (Sch 7 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to supervision orders see PARA 250. As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq.

Subject to Sch 7 para 7(9), a court must not make an order under Sch 7 para 2, Sch 7 para 5(1) or Sch 7 para 6(3) (see note 3) unless the offender is present before the court: Sch 7 para 7(1) (repealed), although a court may make an order under Sch 7 para 5(1) or Sch 7 para 6(3) in the absence of the offender if the effect of the order is confined to one or more of the following, that is to say:

239 (1) revoking the supervision order (Sch 7 para 7(9)(a) (repealed));

240 (2) cancelling a provision included in the supervision order in pursuance of Sch 6 (see PARAS 252-261) or s 63(6)(b) (see PARA 251) (Sch 7 para 7(9)(b) (repealed));

241 (3) reducing the duration of the supervision order or any provision included in it in pursuance of Sch 6 (Sch 7 para 7(9)(c) (repealed));

242 (4) altering in the supervision order the name of any area (Sch 7 para 7(9)(d) (repealed)); or

243 (5) changing the supervisor (Sch 7 para 7(9)(e) (repealed)).

4 I.e. apart from the power under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(2) (see the text and note 5).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(2) (repealed: see note 3). The court must not begin to hear the complaint in the absence of the defendant or issue a warrant under the Magistrates' Courts Act 1980 s 55 (see **MAGISTRATES** vol 29(2) (Reissue) PARAS 693, 701) unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons cannot be served or was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint: see s 55(3); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(3) (repealed); and **MAGISTRATES** vol 29(2) (Reissue) PARAS 693, 701. Where the defendant fails to appear at an adjourned hearing, the court must not issue a warrant under the Magistrates' Courts Act 1980 s 55 unless it is satisfied that he has had adequate notice of the time and place of the adjourned hearing: see s 55(4); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(3) (repealed); and **MAGISTRATES** vol 29(2) (Reissue) PARA 693.

6 Ie the court referred to in the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(2) (see the text to notes 4-5).

7 As to the meaning of 'place of safety' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 608 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(4) (repealed: see note 3)).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(4)(a) (repealed: see note 3).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(4)(b) (repealed: see note 3). Where an offender is so brought before a justice, the justice may either direct that he be released forthwith (Sch 7 para 7(5)(a) (repealed)) or remand him to local authority accommodation (Sch 7 para 7(5)(b) (repealed)). However, where the offender is aged 18 or over at the time when he is brought before a justice, or is aged 18 or over at a time when (apart from these provisions) a youth court could exercise its powers under Sch 7 para 7(6) (see the text and notes 11-14) in respect of him, he must not be remanded to local authority accommodation but may instead be remanded to a remand centre, if the justice or youth court has been notified that such a centre is available for the reception of persons under Sch 7 para 7(7) (Sch 7 para 7(7)(a) (repealed)) or to a prison, if the justice or youth court has not been so notified (Sch 7 para 7(7)(b) (repealed)). As from a day to be appointed it will no longer be possible to remand such an offender to a remand centre, and he may only be remanded to a prison: Sch 7 para 7(7) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 201(1), (3), Sch 8). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'local authority accommodation' see PARA 249 note 13. A justice or court remanding a person to local authority accommodation under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7 must designate, as the authority which is to receive him, the authority named in the supervision order: Sch 7 para 7(8) (repealed). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

10 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see PARA 263).

11 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(2) (see the text and notes 1-5).

12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(6)(a) (repealed: see note 3). Schedule 7 para 7(6) is subject to Sch 7 para 7(7) (see note 9).

13 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 7(6)(b) (repealed: see note 3). For the court's powers to revoke or amend the supervision order see Sch 7 para 5(1); and PARA 263.

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266. Appeal.

With specified exceptions an offender may appeal to the Crown Court against any order made by a relevant court¹:

- 879 (1) resulting from a breach of a requirement of a supervision order²;
- 880 (2) revoking or amending a supervision order³;
- 881 (3) cancelling or varying a requirement for treatment for a mental condition included in a supervision order⁴,

except an order made or which could have been made in the absence of the offender⁵, and an order containing only provisions to which the offender consented⁶. The offender may also appeal to the Crown Court against the dismissal of an application⁷ to revoke a supervision order⁸.

1 As to the meaning of 'relevant court' see PARA 262 note 2.

2 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 11(a) (Sch 7 repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1, subject to a saving in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see Sch 27 para 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229)). As to supervision orders see PARA 250; as to the making of a supervision order see PARA 251. As to the abolition of the power to make supervision orders in respect of offences committed on or after 30 November 2009 see PARA 250 note 2. As to community sentences generally see PARA 163 et seq. The text refers to an order made under Sch 7 para 2(2) (see PARA 262).

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 11(a) (repealed: see note 2). The text refers to an order made under Sch 7 para 5(1) (see PARA 263).

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 11(a) (repealed: see note 2). The text refers to an order made under Sch 7 para 6(3) (see PARA 263).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 11(a)(i) (repealed: see note 2). As to such an order see Sch 7 para 7(9); and PARA 265.

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 11(a)(ii) (repealed: see note 2). As to such an order see Sch 7 para 9; and PARA 264.

7 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 5(1) (see PARA 263).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 7 para 11(b) (repealed: see note 2).

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E. ATTENDANCE CENTRE ORDERS

267. Attendance centre orders.

Where:

- 882 (1) a person aged under 16¹ is convicted by or before a court of an offence committed before 30 November 2009² which is punishable with imprisonment³;
- 883 (2) a court would have (or, as from a day to be appointed, has or would have) power⁴ to commit a person who is under 21 (or, as from a day to be appointed, 16) years of age to prison in default of payment of any sum of money or for failing to do or abstain from doing anything required to be done or left undone⁵; or
- 884 (3) a court has power to commit a person aged at least 21 but under 25 to prison in default of payment of any sum of money⁶,

the court may, if it has been notified by the Secretary of State that an attendance centre⁷ is available for the reception of persons of his description, order him to attend at such a centre, to be specified in the order, for such number of hours⁸ as may be so specified⁹. Such an order is referred to¹⁰ as an attendance centre order¹¹. A court may make an attendance centre order in respect of an offender before a previous attendance centre order made in respect of him has ceased to have effect, and may determine the number of hours to be specified in the order without regard to the number specified in the previous order¹² or to the fact that that order is still in effect¹³.

The times at which an offender is required to attend at an attendance centre must be such as, so far as practicable, avoid:

- 885 (a) any conflict with his religious beliefs or with the requirements of any other youth community order to which he may be subject¹⁴; and
- 886 (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment¹⁵.

The first such time must be a time at which the centre is available for the attendance of the offender in accordance with the notification of the Secretary of State and must be specified in the order¹⁶; and the subsequent times must be fixed by the officer in charge of the centre, having regard to the offender's circumstances¹⁷. An offender may not, however, be required to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion¹⁸.

1 As to the age of an offender for sentencing purposes see PARA 27.

2 The power to make attendance centre orders (which are youth community orders) under the Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(a) was abolished in relation to offences committed on or after 30 November 2009 pursuant to the replacement of youth community orders by youth rehabilitation orders, although the provisions governing youth community orders (and attendance centre orders so far as comprising such orders) continue to have effect in relation to any offence committed before that date and any failure to comply with an order made in respect of an offence committed before that date (see the Criminal Justice and

Immigration Act 2008 Sch 27 para 1, Sch 28 Pt 1; the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074; and PARAS 163, 229), and the power to make attendance centre orders for non-payment of a sum or for failure to abstain from conduct under the Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(b) or (c) (see the text and notes 5-6) continue to have effect until a day to be appointed (see the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074, art 2(f), (u)(xix)). As to the meaning of 'youth community order' see PARA 229. As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq. As to community sentences generally see PARA 163 et seq.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(a) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 102(1), (2)(a); repealed as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1 (see note 2)). The reference to an offence punishable with imprisonment is to be construed without regard to any prohibition on the imprisonment of young offenders: Powers of Criminal Courts (Sentencing) Act 2000 s 164(2). This provision is subject to the Criminal Justice Act 2003 s 148 (see PARA 164), s 150 (see PARA 166), s 156 (see PARA 617): Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(a) (as so amended and repealed).

4 le but for the Powers of Criminal Courts (Sentencing) Act 2000 s 89 (see PARA 11).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(b) (prospectively amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 160, 173; and by the Criminal Justice Act 2003 Sch 32 para 102(1), (2)(b); and the Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(b), (c), (2)-(12) prospectively repealed by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1). At the date at which this volume states the law no day had been appointed for the coming into force of any of these amendments. See note 2.

Where an offender has been so ordered to attend at an attendance centre in default of payment of any sum of money:

- 244 (1) on payment of the whole sum to any person authorised to receive it, the attendance centre order ceases to have effect (Powers of Criminal Courts (Sentencing) Act 2000 s 60(12)(a) (as so prospectively repealed)); and
- 245 (2) on payment of a part of the sum to any such person, the total number of hours for which the offender is required to attend at the centre is to be reduced proportionately, that is to say by such number of complete hours as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part bears to such sum (s 60(12)(b) (as so prospectively repealed)).

Payment thereafter may be made of the whole of the said sum, to the court officer for the magistrates' court which made the order, or of the whole or any part of the said sum, to the officer in charge of the attendance centre specified in the order: CrimPR 52.14(1). However, the officer in charge of the specified attendance centre may not accept a part payment that would not secure a reduction by one or more complete hours of the period of attendance specified in the order: CrimPR 52.14(2). On receiving such a payment, the court officer must forthwith notify the officer in charge of the specified attendance centre (CrimPR 52.14(3)), and that officer must pay any money so received by him to the court officer and must note the receipt of the money in the register maintained at the attendance centre (CrimPR 52.14(4)).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 60(1)(c) (prospectively repealed by the Criminal Justice Act 2003 Sch 32 para 102(1), (2)(c); and as stated in note 5). At the date at which this volume states the law no day had been appointed for the coming into force of these repeals. As to payments see note 5.

7 As to the meaning of 'attendance centre' see PARA 283 note 3 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 s 163 (amended by the Criminal Justice Act 2003 Sch 32 para 123(1), (2))). An attendance centre order may not be made unless the court is satisfied that the attendance centre to be specified in it is reasonably accessible to the person concerned, having regard to his age, the means of access available to him and any other circumstances: Powers of Criminal Courts (Sentencing) Act 2000 s 60(6) (prospectively repealed: see note 5).

8 The aggregate number of hours for which an attendance centre order may require an offender to attend at an attendance centre may not be less than 12 except where: (1) he is under 14 years of age (Powers of Criminal Courts (Sentencing) Act 2000 s 60(3)(a) (prospectively repealed: see note 5)); and (2) the court is of the opinion that 12 hours would be excessive, having regard to his age or any other circumstances (s 60(3)(b) (as so prospectively repealed)).

Until a day to be appointed the aggregate number of hours may not exceed 12 except where the court is of the opinion, having regard to all the circumstances, that 12 hours would be inadequate; and in that case may not exceed 24 hours where the offender is under 16 years of age (s 60(4)(a) (s 60(4) prospectively amended by the Criminal Justice Act 2003 Sch 32 para 102(1), (3); and as so prospectively repealed)) or 36 hours where the

offender is aged 16 or over but under 21 or (where head (3) in the text applies) under 25 (Powers of Criminal Courts (Sentencing) Act 2000 s 60(4)(b) (as so prospectively amended and prospectively repealed)). As from that day it is instead provided that the aggregate number of hours may not exceed 12 except where the court is of the opinion, having regard to all the circumstances, that 12 hours would be inadequate; and in that case the aggregate number of hours may not exceed 24: s 60(4) (as so prospectively amended and prospectively repealed). At the date at which this volume states the law no such day had been appointed.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 60(1) (prospectively repealed: see note 5). Where a court makes an attendance centre order, the designated officer of the court must deliver or send a copy of the order to the officer in charge of the attendance centre specified in it (s 60(11)(a) (s 60(11) amended by SI 2001/618; SI 2005/886; and as so prospectively repealed)), and must also deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender's last or usual place of abode (Powers of Criminal Courts (Sentencing) Act 2000 s 60(11)(b) (as so amended and prospectively repealed)).

10 *Id* in the Powers of Criminal Courts (Sentencing) Act 2000.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 60(2) (prospectively repealed: see note 5).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 60(5)(a) (prospectively repealed: see note 5).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 60(5)(b) (prospectively repealed: see note 5).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 60(7)(a) (amended by the Criminal Justice Act 2003 Sch 32 para 102(1), (4); and prospectively repealed (see note 5)).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 60(7)(b) (prospectively repealed: see note 5).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 60(8) (prospectively repealed: see note 5).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 60(9) (prospectively repealed: see note 5).

18 Powers of Criminal Courts (Sentencing) Act 2000 s 60(10) (prospectively repealed: see note 5).

UPDATE

267 Attendance centre orders

NOTE 5--CrimPR 52.14 now Criminal Procedure Rules 2010, SI 2010/60, r 52.13.

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268. Breach of attendance centre orders.

Until a day to be appointed¹ where an attendance centre order is in force² and it appears on information to a justice that the offender³:

- 887 (1) has failed to attend in accordance with the order⁴; or
- 888 (2) while attending, has committed a breach of the rules⁵ which cannot be adequately dealt with under those rules⁶,

the justice may issue a summons requiring the offender to appear at the place and time specified in the summons or, if the information is in writing and on oath, may issue a warrant for the offender's arrest⁷.

If it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought that he has failed without reasonable excuse to attend in accordance with the order or has committed a breach of the rules, that court:

- 889 (a) may impose on him a fine⁸;
- 890 (b) if the attendance centre order was made by a magistrates' court⁹, may deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made¹⁰; and
- 891 (c) if the order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court¹¹.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 (see the text and notes 2-11) is repealed by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the abolition of the power to make attendance centre orders (in so far as they are youth community orders) in respect of offences committed on or after 30 November 2009 see PARA 267 note 2. As to the meaning of 'attendance centre order' see PARA 267. As to the meaning of 'youth community order' see PARA 229. As to community sentences generally see PARA 163 et seq.

2 As to the making etc of attendance centre orders see PARA 267.

3 References in the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 to an 'offender' include a person who has been ordered to attend an attendance centre for such a default or failure as is mentioned in s 60(1)(b) or s 60(1)(c) (see PARA 267): Sch 5 para 7(1) (prospectively repealed: see note 1). As to the meaning of 'attendance centre' see PARA 283 note 3 (definition applied by s 163 (amended by the Criminal Justice Act 2003 Sch 32 para 123(1), (2))).

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 1(1)(a) (Sch 5 para 1(1) amended by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 6; prospectively repealed (see note 1)).

5 The rules made under the Criminal Justice Act 2003 s 222(1)(d) or (e) (relating to the provision and carrying on of attendance centres, and to the attendance of persons subject to activity requirements or attendance centre requirements at places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records: see PARA 285).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 1(1)(b) (Sch 5 paras 1(1)(b), 2(5)(b), 3(3)(b) amended by the Criminal Justice Act 2003 Sch 32 paras 90, 126; prospectively repealed (see note 1)).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 1(1) (as amended and prospectively repealed: see notes 1, 4, 6). Any summons or warrant so issued must direct the offender to appear or be brought:

- 246 (1) before a magistrates' court acting in the local justice area in which the offender resides (Sch 5 para 1(2)(a) (Sch 5 para 1(2) substituted by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 6; and amended by SI 2005/886; as so prospectively repealed)); or
- 247 (2) if it is not known where the offender resides, before a magistrates' court acting in the local justice area in which is situated the attendance centre which the offender is required to attend by the order or by virtue of an order under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(1)(b) (see PARA 269) (Sch 5 para 1(2)(b) (as so substituted, amended and prospectively repealed)).

In proceedings before the Crown Court for failure to attend an attendance centre or a breach of the rules, any question whether there has been a failure to attend or a breach of the rules is to be determined by the court and not by the verdict of the jury: Sch 5 para 3(4) (as so prospectively repealed).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 2(1)(a) (prospectively repealed: see note 1). The fine may not exceed £1,000: Sch 5 para 2(1)(a) (as so prospectively repealed). Any exercise by a court of this power is without prejudice to the continuation of the attendance centre order: Sch 5 para 2(2) (as so prospectively repealed). Such a fine is deemed, for the purpose of any enactment, to be a sum adjudged to be paid by a conviction: Sch 5 para 2(3) (as so prospectively repealed).

9 Where an attendance centre order has been made on appeal, for these purposes it is deemed:

- 248 (1) if it was made on appeal brought from a magistrates' court, to have been made by that magistrates' court (Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 6(1)(a) (prospectively repealed: see note 1)); and
- 249 (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (Sch 5 para 6(1)(b) (as so prospectively repealed)).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 2(1)(b) (prospectively repealed: see note 1). In so far as it has effect in relation to a person who has been ordered to attend an attendance centre for such a default or failure as is mentioned in s 60(1)(b) or s 60(1)(c) (see PARA 267), a person in respect of whom an attendance centre order has been imposed for a breach of a supervision order (see Sch 7 para 2(2)(a)(iii); and PARA 262), a person in respect of whom an attendance centre order has been imposed for a breach of an action plan order or a reparation order (see Sch 8 para 2(2)(a)(iii); and PARA 247) or a person in respect of whom an attendance centre order has been imposed for a breach of a curfew order or an exclusion order (see Sch 3 para 8; and PARA 234), Sch 5 para 2(1)(b) instead provides that the court may deal with the offender in any way in which he could have been dealt with by the court which made the order if the order had not been made: Sch 3 para 8(2), Sch 5 para 7(2)(a), Sch 7 para 4(4)(a), Sch 8 para 4(4)(a) (Sch 3 para 8 substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; as so prospectively repealed). In relation to an attendance centre order made on appeal (see note 9), the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 2(1)(b) instead provides that the court may deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order: Sch 5 para 6(2) (as so prospectively repealed).

Where a magistrates' court deals with an offender under Sch 5 para 2(1)(b) it must revoke the attendance centre order if it is still in force: Sch 5 para 2(4) (as so prospectively repealed). In dealing with an offender under Sch 5 para 2(1)(b) a magistrates' court:

- 250 (1) must take into account the extent to which the offender has complied with the requirements of the attendance centre order (Sch 5 para 2(5)(a) (as so prospectively repealed)); and
- 251 (2) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in the Criminal Justice Act 2003 s 152(2) (see PARA 19) (Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 2(5)(b) (as amended (see note 6); as so prospectively repealed)).

Head (2) above does not apply where a person has been ordered to attend an attendance centre for such a default or failure as is mentioned in s 60(1)(b) or s 60(1)(c) (see PARA 267): Sch 5 para 7(2)(b) (as so prospectively repealed).

A person sentenced under Sch 5 para 2(1)(b) for an offence may appeal to the Crown Court against sentence: Sch 5 para 2(6) (as so prospectively repealed). In so far as it has effect in relation to a person in respect of whom an attendance centre order has been imposed for a breach of a supervision order (see Sch 7 para 2(2)(a)(iii); and PARA 262) or in relation to a person in respect of whom an attendance centre order has been imposed

for a breach of an action plan order or a reparation order (see Sch 8 para 2(2)(a)(iii); and PARA 247), Sch 5 para 2(6) provides that a person sentenced under Sch 5 para 2(1)(b) may appeal to the Crown Court against sentence: see Sch 7 para 4(4)(b), Sch 8 para 4(4)(b); and PARAS 247, 262.

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 2(1)(c) (prospectively repealed: see note 1). A magistrates' court which deals with an offender's case under Sch 5 para 2(1)(c) must send to the Crown Court a certificate signed by a justice of the peace giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules which he has committed (Sch 5 para 2(7)(a) (as so prospectively repealed)), together with such other particulars of the case as may be desirable (Sch 5 para 2(7)(b) (as so prospectively repealed)); and a certificate purporting to be so signed is admissible as evidence of the failure or the breach before the Crown Court (Sch 5 para 2(7) (as so prospectively repealed)).

Where, by virtue of Sch 7 para 2(1)(c) the offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court that he has failed without reasonable excuse to attend in accordance with the order (Sch 5 para 3(1)(a) (as so prospectively repealed)) or has committed a breach of the rules (Sch 5 para 3(1)(b) (as so prospectively repealed)), that court may deal with him, for the offence in respect of which the order was made, in any manner in which it could have dealt with him for that offence if it had not made the order (Sch 5 para 3(1) (as so prospectively repealed)). In so dealing with an offender the Crown Court must take into account the extent to which the offender has complied with the requirements of the attendance centre order (Sch 5 para 3(3)(a) (as so prospectively repealed)) and in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in the Criminal Justice Act 2003 s 152(2) (see PARA 19): Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 3(3)(b) (as amended (see note 6); as so prospectively repealed)). Schedule 5 para 3(3)(b) does not apply where a person has been ordered to attend an attendance centre for such a default or failure as is mentioned in s 60(1)(b) or s 60(1)(c) (see PARA 267): Sch 5 para 7(2)(b) (as so prospectively repealed). Where the court deals with the offender under Sch 5 para 3(1) it must revoke the attendance centre order if it is still in force: Sch 5 para 3(2) (as so prospectively repealed).

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269. Amendment and revocation of attendance centre orders.

Until a day to be appointed¹ on the application of the offender² or of the officer in charge of the relevant attendance centre³, an attendance centre order which is in force may be amended by an appropriate magistrates' court⁴. The power so to vary an attendance centre order is a power by order:

- 892 (1) to vary the day or hour specified in the order for the offender's first attendance at the relevant attendance centre⁵; or
- 893 (2) to substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances⁶.

An attendance centre order which is in force may be revoked by an appropriate court⁷ on an application made by the offender or the officer in charge of the relevant attendance centre⁸. The power so to revoke an attendance centre order is a power conferred:

- 894 (a) on a magistrates' court to revoke an attendance centre order made by such a court⁹; or
- 895 (b) on the Crown Court to revoke an attendance centre order made by the Crown Court¹⁰,

and includes power to deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made¹¹.

1 As from a day to be appointed the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 (see the text and notes 2-11) is repealed by the Criminal Justice and Immigration Act 2008 s 6(1), Sch 28 Pt 1. At the date at which this volume states the law no such day had been appointed. As to the abolition of the power to make attendance centre orders (in so far as they are youth community orders) in respect of offences committed on or after 30 November 2009 see PARA 267 note 2. As to the meaning of 'attendance centre order' see PARA 267. As to the meaning of 'youth community order' see PARA 229. As to community sentences generally see PARA 163 et seq.

2 As to the meaning of 'offender' see PARA 268 note 3.

3 As to the meaning of 'attendance centre' see PARA 283 note 3 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 s 163 (amended by the Criminal Justice Act 2003 Sch 32 para 123(1), (2))). For these purposes, 'relevant attendance centre', in relation to an attendance centre order, means the attendance centre specified in the order or substituted for the attendance centre so specified by an order made by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(1)(b) (see the text and note 6): Sch 5 paras 4(6), 5(4) (prospectively repealed: see note 1).

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(1) (prospectively repealed: see note 1). 'Appropriate magistrates' court' means a magistrates' court acting in the local justice area in which the relevant attendance centre is situated (Sch 5 para 5(2)(a) (Sch 5 paras 4(2)(b)(i), (7)(a), 5(2)(a), (3) amended by SI 2005/886; as so prospectively repealed)) or (except where the attendance centre order was made by the Crown Court) the magistrates' court which made the order (Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(2)(b) (as so prospectively repealed)). Where a magistrates' court dealing with an offender under Sch 5 para 2(1)(a) (see PARA 268) would not otherwise have the power to amend the order under Sch 5 para 5(1)(b)

(see head (2) in the text), Sch 5 para 5(1)(b) has effect as if references to an appropriate magistrates' court were references to the court dealing with the offender: Sch 5 para 2(5A) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 5 para 6(1), (4); as so prospectively repealed).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(1)(a) (prospectively repealed: see note 1). It is the duty of the designated officer of the court which makes an order under Sch 5 para 5(1) to deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender's last or usual place of abode (Sch 5 para 5(3)(a) (as amended and prospectively repealed: see notes 1, 4)) and to deliver or send a copy: (1) if the order is made by virtue of head (1) in the text, to the officer in charge of the relevant attendance centre (Sch 5 para 5(3)(b)(i) (as so amended and prospectively repealed)); and (2) if it is made by virtue of head (2) in the text, to the officer in charge of the attendance centre which the order as amended will require the offender to attend (Sch 5 para 5(3)(b)(ii) (as so amended and prospectively repealed)).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 5(1)(b) (prospectively repealed: see note 1). See note 5.

7 le: (1) where the court which made the order was the Crown Court and there is included in the order a direction that the power to revoke the order is reserved to that court, the Crown Court (Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 4(2)(a) (prospectively repealed: see note 1)); and (2) in any other case, either of the following: (a) a magistrates' court acting in the local justice area in which the relevant attendance centre is situated (Sch 5 para 4(2)(b)(i) (as amended (see note 4); as so prospectively repealed)); (b) the court which made the order (Sch 5 para 4(2)(b)(ii) (as so prospectively repealed)).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 4(1) (prospectively repealed: see note 1).

9 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 4(3)(a) (prospectively repealed: see note 1).

10 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 4(3)(b) (prospectively repealed: see note 1).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 4(3) (prospectively repealed: see note 1). In so far as it has effect in relation to a person who has been ordered to attend an attendance centre for such a default or failure as is mentioned in s 60(1)(b) or s 60(1)(c) (see PARA 267), a person in respect of whom an attendance centre order has been imposed for a breach of a supervision order (see Sch 7 para 2(2)(a)(iii); and PARA 262), a person in respect of whom an attendance centre order has been imposed for a breach of an action plan order (see Sch 8 para 2(2)(a)(iii); and PARA 247) or a person in respect of whom an attendance centre order has been imposed for a breach of a curfew order or an exclusion order (see Sch 3 para 8; and PARA 234), Sch 5 para 4(3) instead provides that the court's power under Sch 5 para 4 includes power to deal with the offender in any way in which he could have been dealt with by the court which made the order if the order had not been made: Sch 3 para 8(2) (substituted by the Criminal Justice Act 2003 Sch 32 paras 90, 125; and repealed with savings as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1); Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 7(2)(a) (as so prospectively repealed); Sch 7 para 4(4)(a) (Sch 7 repealed with savings as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1); Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 4(4)(a) (Sch 8 para 4 repealed with savings as from 30 November 2009 by the Criminal Justice and Immigration Act 2008 Sch 28 Pt 1). In relation to an attendance centre order made on appeal, the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 4(3) instead provides that the court's power under Sch 5 para 4 includes power to deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order: Sch 5 para 6(2) (as so prospectively repealed). As to the court by which an attendance centre order made on appeal is deemed to have been made for these purposes see Sch 5 para 6(1); and PARA 268 note 9.

A person sentenced by a magistrates' court under Sch 5 para 4(3) for an offence may appeal to the Crown Court against sentence: Sch 5 para 4(4) (as so prospectively repealed). In so far as it has effect in relation to a person in respect of whom an attendance centre order has been imposed for a breach of a supervision order (see Sch 7 para 2(2)(a)(iii); and PARA 262) or in relation to a person in respect of whom an attendance centre order has been imposed for a breach of an action plan order (see Sch 8 para 2(2)(a)(iii); and PARA 247), Sch 5 para 4(4) provides that a person sentenced under Sch 5 para 4(3) may appeal to the Crown Court against sentence: Sch 7 para 4(4)(b) (as so repealed); Sch 8 para 4(4)(b) (as so repealed).

The proper officer of a court which makes an order revoking an attendance centre order must:

252 (1) deliver a copy of the revoking order to the offender or send a copy by registered post or the recorded delivery service addressed to the offender's last or usual place of abode (Sch 5 para 4(5)(a) (as so prospectively repealed)); and

253 (2) deliver or send a copy to the officer in charge of the relevant attendance centre (Sch 5 para 4(5)(b) (as so prospectively repealed)).

'Proper officer' means: (a) in relation to a magistrates' court, the designated officer for that court (Sch 5 para 4(7)(a) (as amended (see note 4); as so prospectively repealed)); and (b) in relation to the Crown Court, the appropriate officer (Sch 5 para 4(7)(b) (as so prospectively repealed)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/270. Requirements which may be imposed.

8. COMMUNITY REQUIREMENTS

(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES

270. Requirements which may be imposed.

Custody plus orders¹, intermittent custody orders², suspended sentence orders³ and community orders⁴ are required to specify one or more requirements with which the offender is required to comply for the duration of the order or (where applicable) during the non-custodial element of the term⁵. The requirements which may be specified for the purposes of any of the orders referred to above are:

- 896 (1) an unpaid work requirement⁶;
- 897 (2) an activity requirement⁷;
- 898 (3) a programme requirement⁸;
- 899 (4) a prohibited activity requirement⁹;
- 900 (5) a curfew requirement¹⁰;
- 901 (6) an exclusion requirement¹¹;
- 902 (7) a supervision requirement¹²; and
- 903 (8) in a case where the offender is aged under 25¹³, an attendance centre requirement¹⁴,

while the following requirements may be specified for the purposes of suspended sentence orders or community orders only:

- 904 (a) a residence requirement¹⁵;
- 905 (b) a mental health treatment requirement¹⁶;
- 906 (c) a drug rehabilitation requirement¹⁷;
- 907 (d) an alcohol treatment requirement¹⁸.

An electronic monitoring requirement may also be imposed for the purpose of securing the offender's compliance with any of the requirements listed above¹⁹.

1 As to custody plus orders see PARAS 98-109.

2 As to intermittent custody orders see PARA 100.

3 As to suspended sentence orders see PARAS 110-138.

4 As to community orders see PARAS 168-201; as to community sentences generally see PARAS 163-166.

5 As to the imposition of requirements pursuant to custody plus orders see PARAS 98, 99; as to the imposition of requirements pursuant to intermittent custody orders see PARAS 100, 101; as to the imposition of requirements pursuant to suspended sentence orders see PARA 112; and as to the imposition of requirements pursuant to community orders see PARA 171.

Custody plus orders, intermittent custody orders, suspended sentence orders and community orders are 'relevant orders' for the purposes of the Criminal Justice Act 2003 Pt 12 Ch 4 (ss 196-223) (see PARAS 270-285): s 196(1). Any reference to a requirement being imposed by, or included in, a relevant order is, in relation to a

custody plus order or an intermittent custody order, a reference to compliance with the requirement being required by the order to be a condition of a licence: s 196(2).

The Criminal Justice Act 2003 Pt 12 Ch 4 has effect, subject to specified modifications, in relation to an enforcement order (ie an order under the Children Act 1989 ss 11J-11M, Sch A1: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 257-259) as it has effect in relation to a community order: see Sch A1 para 1; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 208.

- 6 See the Criminal Justice Act 2003 s 199; and PARA 271.
- 7 See the Criminal Justice Act 2003 s 201; and PARA 272.
- 8 See the Criminal Justice Act 2003 s 202; and PARA 273.
- 9 See the Criminal Justice Act 2003 s 203; and PARA 274.
- 10 See the Criminal Justice Act 2003 s 204; and PARA 275.
- 11 See the Criminal Justice Act 2003 s 205; and PARA 276.
- 12 See the Criminal Justice Act 2003 s 213; and PARA 282.
- 13 As to the determination of a person's age for these purposes see PARA 27 note 13.
- 14 See the Criminal Justice Act 2003 s 214; and PARA 283.
- 15 See the Criminal Justice Act 2003 s 206; and PARA 277.
- 16 See the Criminal Justice Act 2003 ss 207-208; and PARA 278.
- 17 See the Criminal Justice Act 2003 ss 209-211; and PARA 279.
- 18 See the Criminal Justice Act 2003 s 212; and PARA 281.
- 19 See the Criminal Justice Act 2003 ss 215, 218(4); and PARA 284.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/271. Unpaid work requirement.

271. Unpaid work requirement.

'Unpaid work requirement', in relation to a relevant order¹, means a requirement that the offender must perform unpaid work for a specified number of hours². A court may not impose an unpaid work requirement unless the court is satisfied:

- 908 (1) that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which he resides or will reside³; and
- 909 (2) that the offender is a suitable person to perform work under such a requirement⁴.

An offender in respect of whom an unpaid work requirement of a relevant order is in force must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer⁵. The work required to be performed under an unpaid work requirement of a community order⁶ or a suspended sentence order⁷ must⁸ be performed during a period of 12 months⁹. Unless revoked, a community order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it¹⁰. Where an unpaid work requirement is imposed by a suspended sentence order, the supervision period¹¹ continues until the offender has worked under the order for the number of hours specified in the order, but does not continue beyond the end of the operational period¹².

1 le a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

2 Criminal Justice Act 2003 s 199(1), (2). The number of hours must be specified in the relevant order and must be in the aggregate not less than 40 and not more than 300 (s 199(2)(a), (b)), although where the court is amending a community order so as to impose more onerous requirements under Sch 8 para 9(1)(a) (see PARA 178) or Sch 8 para 10(1)(a) (see PARA 179) and the community order does not contain an unpaid work requirement, the minimum aggregate number of hours which may be specified in the order is 20 rather than 40: Sch 8 paras 9(3A), 10(3A) (added by the Criminal Justice and Immigration Act 2008 s 38). As a general policy it is appropriate to keep some hours in reserve to be added to the term in the event of a breach: see *R v Fergie* [2007] EWCA Crim 1883, [2007] All ER (D) 139 (Sep). The Secretary of State may by order amend the Criminal Justice Act 2003 s 199(2) by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order: s 223(1)(a). At the date at which this volume states the law no such order had been made.

Where the court makes relevant orders in respect of two or more offences of which the offender has been convicted on the same occasion and includes unpaid work requirements in each of them, the court may direct that the hours of work specified in any of those requirements is to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent does not exceed the 300 hours: Criminal Justice Act 2003 s 199(5). For general provisions relevant to an unpaid work requirement see PARA 271.

3 Criminal Justice Act 2003 s 218(1) (amended by SI 2005/886).

4 Criminal Justice Act 2003 s 199(3). The court may, if it thinks necessary, hear an appropriate officer before arriving at a conclusion on this matter: s 199(3) (s 199(3) amended, and s 199(4) repealed, by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 84, Sch 28 Pt 1, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)). An 'appropriate officer' is:

254 (1) in the case of an offender aged 18 or over, an officer of a local probation board or an officer of a provider of probation services (Criminal Justice Act 2003 s 199(4)(a) (s 199(4) amended by SI 2008/912; repealed)); and

255 (2) in the case of an offender aged under 18, an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team (s 199(4)(b) (as so amended and repealed; and also amended by the Children Act 2004 Sch 5 Pt 4)).

As to the increase in the age limit for community orders from 16 to 18 (necessitating the amendments described above) see PARAS 163, 168, 169. As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17. As to local probation boards and providers of probation services see PARA 733 et seq. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

5 Criminal Justice Act 2003 s 200(1). As to the meaning of 'responsible officer' see PARA 104 note 7; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

6 As to the meaning of 'community order' see PARA 163.

7 As to the meaning of 'suspended sentence order' see PARA 110.

8 This duty is subject to the Criminal Justice Act 2003 Sch 8 para 20, Sch 12 para 18 (extension of unpaid work requirement): see PARAS 123, 186.

9 Criminal Justice Act 2003 s 200(2).

10 Criminal Justice Act 2003 s 200(3).

11 'The supervision period' is to be read in accordance with the Criminal Justice Act 2003 s 189(1) (see PARA 110): ss 195, 200(4).

12 Criminal Justice Act 2003 s 200(4). 'The operational period' is to be read in accordance with s 189(1)(b)(ii) (see PARA 110): ss 195, 200(4).

UPDATE

271 Unpaid work requirement

NOTE 12--See *West Yorkshire Probation Board v Cruickshanks* [2010] EWHC 615 (Admin), [2010] All ER (D) 239 (Mar) (inappropriate to summons for failure to attend to perform unpaid work outside period covering supervision period).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/272. Activity requirement.

272. Activity requirement.

'Activity requirement', in relation to a relevant order¹, means a requirement that the offender must do either or both of:

- 910 (1) present himself to a person or persons specified in the relevant order at a place or places so specified on such number of days as may be so specified²;
- 911 (2) participate in activities specified in the order on such number of days as may be so specified³.

A court may not, however, include an activity requirement unless it has consulted an appropriate probation officer⁴ and is satisfied:

- 912 (a) that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the local justice area in which he resides or will reside⁵; and
- 913 (b) that it is feasible to secure compliance with the requirement⁶.

A court also may not include an activity requirement if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion⁷.

A requirement to participate in activities operates to require the offender, in accordance with instructions given by his responsible officer, to participate in activities on the number of days specified in the order⁸, and, while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities⁹. The specified activities may consist of or include activities whose purpose is that of reparation, such as activities involving contact between offenders and persons affected by their offences¹⁰.

1 ie a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

2 Criminal Justice Act 2003 s 201(1)(a). The aggregate of the number of days specified under s 201(1) must not exceed 60: s 201(5). A requirement such as is mentioned in s 201(1)(a) operates to require the offender:

- 256 (1) in accordance with instructions given by his responsible officer, to present himself at a place or places on the number of days specified in the order (s 201(6)(a)); and
- 257 (2) while at any place, to comply with instructions given by, or under the authority of, the person in charge of that place (s 201(6)(b)).

As to the meaning of 'responsible officer' see PARA 104 note 7. A place specified under s 201(1)(a) must be:

- 258 (a) a community rehabilitation centre (s 201(7)(a)); or
- 259 (b) a place that has been approved as providing facilities suitable for persons subject to activity requirements either by a local probation board (where the premises are situated in the area of such a board) or by a provider of probation services authorised to do so by arrangements under the Offender Management Act 2007 s 3 (see PARA 741) (in any other case) (s 201(7)(b) (substituted by SI 2008/912)).

As to the meaning of 'local probation board' see PARA 98 note 17; as to local probation boards and providers of probation services see PARA 733 et seq. The Criminal Justice Act 2003 s 201(7) does not apply in relation to the transfer of custody plus orders, intermittent custody orders, suspended sentence orders and community orders to Scotland or Northern Ireland (as to which see PARAS 108-109, 130-131, 190-193): see Sch 9 paras 2(1), (3)(a), 4(1), (3)(a), Sch 11 paras 7(1), (3)(a), 13(1), (3)(a), Sch 13 paras 4(1), (3)(a), 9(1), (3)(a).

Where the place specified under s 201(1)(a) is a community rehabilitation centre, the reference in s 201(6)(a) (see head (1) above) to the offender presenting himself at the specified place includes a reference to him presenting himself elsewhere than at the centre for the purpose of participating in activities in accordance with instructions given by, or under the authority of, the person in charge of the centre: s 201(8).

'Community rehabilitation centre' means premises:

- 260 (i) at which non-residential facilities are provided for use in connection with the rehabilitation of offenders (s 201(10)(a)); and
- 261 (ii) which are for the time being approved by the Secretary of State as providing facilities suitable for persons subject to relevant orders (s 201(10)(b)).

Where a relevant order imposes an activity requirement the court by which the order is made must also forthwith provide the person specified under s 201(1)(a) with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14. For general requirements relevant to an activity requirement see PARA 288.

3 Criminal Justice Act 2003 s 201(1)(b).

4 By virtue of the Criminal Justice Act 2003 s 201(3)(a) (s 201(3)(a)(i), (ii) amended by SI 2008/912; and substituted by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 85, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)), the court is required to consult:

- 262 (1) in the case of an offender aged 18 or over, an officer of a local probation board or an officer of a provider of probation services (Criminal Justice Act 2003 s 201(3)(a)(i) (as so amended and substituted)); and
- 263 (2) in the case of an offender aged under 18, an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team (s 201(3)(a)(ii) (as so amended and substituted)).

As to the increase in the age limit for community orders from 16 to 18 (necessitating the amendments described above) see PARAS 163, 168, 169. As to the meaning of 'youth offending team' see PARA 98 note 17; as to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

5 Criminal Justice Act 2003 s 218(2).

6 Criminal Justice Act 2003 s 201(3)(b).

7 Criminal Justice Act 2003 s 201(4).

8 Criminal Justice Act 2003 s 201(9)(a).

9 Criminal Justice Act 2003 s 201(9)(b).

10 Criminal Justice Act 2003 s 201(2).

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273. Programme requirement.

'Programme requirement', in relation to a relevant order¹, means a requirement that the offender must participate in an accredited programme² specified in the order at a place so specified³ on such number of days as may be so specified⁴.

A court may not include a programme requirement in a relevant order unless:

- 914 (1) the accredited programme which the court proposes to specify in the order has been recommended to the court as being suitable for the offender by an appropriate probation officer⁵; and
- 915 (2) the court is satisfied that the programme is (or, where the relevant order is a custody plus order⁶ or an intermittent custody order⁷, will be) available at the place proposed to be specified⁸.

A court also may not include a programme requirement in a relevant order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer⁹, unless that other person consents to its inclusion¹⁰.

A requirement to attend an accredited programme operates to require the offender:

- 916 (a) in accordance with instructions given by his responsible officer, to participate in the accredited programme at the place specified in the order on the number of days specified in the order¹¹; and
- 917 (b) while at that place, to comply with instructions given by, or under the authority of, the person in charge of the programme¹².

1 Is a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

2 In the Criminal Justice Act 2003 Pt 12 (ss 142-305), 'accredited programme' means a systematic set of activities (a 'programme') that is for the time being accredited by the Secretary of State for the purposes of s 202: s 202(2), (3)(a) (s 202(2) amended by the Offender Management Act 2007 s 31(1)(a)). For general provisions relating to a programme requirement see PARA 289.

3 A place specified in an order must be a place that has been approved as providing facilities suitable for persons subject to programme requirements by a local probation board (where the premises are situated in the area of such a board) or by a provider of probation services authorised to do so by arrangements under the Offender Management Act 2007 s 3 (in any other case): Criminal Justice Act 2003 s 202(7) (substituted by SI 2008/912). As to the meaning of 'local probation board' see PARA 98 note 17; as to local probation boards and providers of probation services see PARA 733 et seq. The Criminal Justice Act 2003 s 202(7) does not apply in relation to the transfer of custody plus orders, intermittent custody orders, suspended sentence orders or community orders to Scotland or Northern Ireland (as to which see PARAS 108-109, 130-131, 190-193): see Sch 9 paras 2(1), (3)(b), 4(1), (3)(b), Sch 11 paras 7(1), (3)(b), 13(1), (3)(b), Sch 13 paras 4(1), (3)(b), 9(1), (3)(b).

4 Criminal Justice Act 2003 s 202(1).

5 Criminal Justice Act 2003 s 202(4)(a). By virtue of s 202(4)(a) (s 202(4)(a)(i), (ii) amended by SI 2008/912; and substituted by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 86, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)), the recommendation is required to have been made:

264 (1) in the case of an offender aged 18 or over, by an officer of a local probation board or an officer of a provider of probation services (Criminal Justice Act 2003 s 202(4)(a)(i) (as so amended and substituted)); and

265 (2) in the case of an offender aged under 18, by an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team (s 202(4)(a)(ii) (as so amended and substituted)).

As to the increase in the age limit for community orders from 16 to 18 (necessitating the amendments described above) see PARAS 163, 168, 169. As to the meaning of 'youth offending team' see PARA 98 note 17; as to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

6 As to custody plus orders see PARAS 98-109.

7 As to intermittent custody orders see PARA 100.

8 Criminal Justice Act 2003 s 202(4)(b).

9 As to the meaning of 'responsible officer' see PARA 104 note 7.

10 Criminal Justice Act 2003 s 202(5).

11 Criminal Justice Act 2003 s 202(6)(a).

12 Criminal Justice Act 2003 s 202(6)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/274. Prohibited activity requirement.

274. Prohibited activity requirement.

'Prohibited activity requirement', in relation to a relevant order¹, means a requirement that the offender must refrain from participating in activities specified in the order on a day or days so specified² or during a period so specified³. A court may not include a prohibited activity requirement in a relevant order unless it has consulted a relevant probation officer⁴. The requirements that may be included in a relevant order include a requirement that the offender must not possess, use or carry a firearm⁵.

1 In a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

2 Criminal Justice Act 2003 s 203(1)(a). For general provisions relating to a prohibited activity requirement see PARA 290.

3 Criminal Justice Act 2003 s 203(1)(b).

4 By virtue of the Criminal Justice Act 2003 s 203(2) (s 203(2)(a), (b) amended by SI 2008/912; and substituted by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 87, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)), the court is required to consult:

266 (1) in the case of an offender aged 18 or over, an officer of a local probation board or an officer of a provider of probation services (Criminal Justice Act 2003 s 203(2)(a) (as so amended and substituted)); and

267 (2) in the case of an offender aged under 18, an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team (s 203(2)(b) (as so amended and substituted)).

As to the increase in the age limit for community orders from 16 to 18 (necessitating the amendments described above) see PARAS 163, 168, 169. As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17; as to local probation boards and providers of probation services see PARA 733 et seq; as to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

5 Criminal Justice Act 2003 s 203(3). For these purposes 'firearm' means a firearm within the meaning of the of the Firearms Act 1968: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/275. Curfew requirement.

275. Curfew requirement.

'Curfew requirement' in relation to a relevant order¹, means a requirement that the offender must remain, for periods specified in the relevant order², at a place so specified³. Before making a relevant order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender)⁴.

1 le a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

2 A relevant order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than 12 hours in any day: Criminal Justice Act 2003 s 204(2). The Secretary of State may by order amend the Criminal Justice Act 2003 s 204(2) by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order: s 223(1)(b). At the date at which this volume states the law no such order had been made.

A community order (see PARAS 168-194) or suspended sentence order (see PARAS 110-138) which imposes a curfew requirement may not specify periods which fall outside the period of six months beginning with the day on which it is made: s 204(3). The Secretary of State may by order amend s 204(3) by substituting, for any period for the time being specified therein, such other period as may be specified in the order: s 223(2), (3)(a). At the date at which this volume states the law no such order had been made.

As from a day to be appointed a custody plus order (see PARAS 98-109) which imposes a curfew requirement may not specify a period which falls outside the period of six months beginning with the first day of the licence period as defined by s 181(3)(b) (see PARA 98): s 204(4) (not yet in force). An intermittent custody order (see PARA 100) which imposes a curfew requirement must not specify a period if to do so would cause the aggregate number of days on which the offender is subject to the requirement for any part of the day to exceed 182: s 204(5).

3 Criminal Justice Act 2003 s 204(1). For general provisions relating to curfew requirements see PARA 275. Where the court makes a community order imposing a curfew requirement the court must also impose an electronic monitoring requirement unless it is prevented from doing so or unless, in the particular circumstances of the case, it considers it inappropriate to do so: see s 177(3); and PARA 171.

4 Criminal Justice Act 2003 s 204(6).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/276. Exclusion requirement.

276. Exclusion requirement.

'Exclusion requirement', in relation to a relevant order¹, means a provision prohibiting the offender from entering a place² specified in the order for a period so specified³. An exclusion requirement may provide for the prohibition to operate only during the periods specified in the order⁴ and may specify different places for different periods or days⁵.

1 le a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

2 In the Criminal Justice Act 2003 s 205, 'place' includes an area: s 205(4).

3 Criminal Justice Act 2003 s 205(1). Where the relevant order is a community order (see PARAS 168-194), the period specified must not be more than two years: s 205(2). The Secretary of State may by order amend s 205(2) by substituting, for any period for the time being specified therein, such other period as may be specified in the order: s 223(2), (3)(b). At the date at which this volume states the law no such order had been made. Where a relevant order imposes an exclusion requirement for the purpose (or partly for the purpose) of protecting a person from being approached by the offender, the court by which the order is made must also forthwith provide the person intended to be protected with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14. Where the court makes a community order imposing an exclusion requirement the court must also impose an electronic monitoring requirement unless it is prevented from doing so or unless, in the particular circumstances of the case, it considers it inappropriate to do so: see s 177(3); and PARA 171. For general provisions relating to exclusion requirements see PARA 276.

4 Criminal Justice Act 2003 s 205(3)(a).

5 Criminal Justice Act 2003 s 205(3)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/277. Residence requirement.

277. Residence requirement.

'Residence requirement', in relation to a community order¹ or a suspended sentence order², means a requirement that, during a period specified in the relevant order, the offender must reside at a place specified in the order³. If the order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer⁴, at a place other than that specified in the order⁵. Before making a community order or suspended sentence order containing a residence requirement, the court must consider the home surroundings of the offender⁶.

1 As to community orders see PARAS 168-194; as to community sentences generally see PARAS 163-166.

2 As to suspended sentence orders see PARAS 110-138.

3 Criminal Justice Act 2003 s 206(1). A court may not specify a hostel or other institution as the place where an offender must reside, except on the recommendation of an officer of a local probation board or an officer of a provider of probation services: Criminal Justice Act 2003 s 206(4) (amended by SI 2008/912). As to the meaning of 'local probation board' see PARA 98 note 17; as to local probation boards and providers of probation services see PARA 733 et seq. Where a relevant order imposes a residence requirement relating to residence in an institution, the court by which the order is made must also forthwith provide the person in charge of the institution with a copy of so much of the order as relates to that requirement: Criminal Justice Act 2003 s 219(2), Sch 14.

Note that this provision does not apply in relation to the transfer of suspended sentence orders or community orders to Scotland or Northern Ireland (as to which see PARAS 130-131, 190-193): see the Criminal Justice Act 2003 Sch 9 paras 2(1), (3)(c), 4(1), (3)(c), Sch 13 paras 4(1), (3)(c), 9(1), (3)(c). For general provisions relating to exclusion requirements see PARA 276.

4 As to the meaning of 'responsible officer' see PARA 104 note 7.

5 Criminal Justice Act 2003 s 206(2).

6 Criminal Justice Act 2003 s 206(3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/278. Mental health treatment requirement.

278. Mental health treatment requirement.

'Mental health treatment requirement', in relation to a community order¹ or a suspended sentence order², means a requirement that the offender must submit, during a period or periods specified in the order, to treatment³ by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender's mental condition⁴.

A court may not include a mental health treatment requirement unless:

- 918 (1) the court is satisfied, on the evidence of an approved⁵ registered medical practitioner, that the mental condition of the offender⁶ is such as requires and may be susceptible to treatment⁷ but is not such as to warrant the making of a hospital order or guardianship order⁸;
- 919 (2) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient)⁹; and
- 920 (3) the offender has expressed his willingness to comply with such a requirement¹⁰.

1 As to community orders see PARAS 168-194; as to community sentences generally see PARAS 163-166.

2 As to suspended sentence orders see PARAS 110-138.

3 The treatment required must be such one of the following kinds of treatment as may be specified in the relevant order:

268 (1) treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 421, 430) or a hospital within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 417), but not in hospital premises where high security psychiatric services within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 418) are provided (see the Criminal Justice Act 2003 s 207(2)(a) (modified in relation to the transfer of suspended sentence orders or community orders to Scotland and in relation to the transfer of suspended sentence orders to Northern Ireland (see PARAS 130-131, 190-193) by Sch 9 paras 2(1), (4), 4(1), (4), Sch 13 para 4(1), (4)));

269 (2) treatment as a non-resident patient at such institution or place as may be specified in the order (s 207(2)(b));

270 (3) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified (s 207(2)(c) (amended by SI 2009/1357)),

but the nature of the treatment is not to be specified in the order except as mentioned in head (1), (2) or (3) above (Criminal Justice Act 2003 s 207(2)). Where a relevant order imposes a mental health treatment requirement the court by which the order is made must also forthwith provide the person specified under s 207(2)(c) or the person in charge of the institution or place specified under s 207(2)(a) or (b) with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14.

Where the medical practitioner or registered psychologist by whom or under whose direction an offender is being treated for his mental condition in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which (s 208(1) (amended by SI 2009/1357)):

271 (a) is not specified in the order (Criminal Justice Act 2003 s 208(1)(a)); and

272 (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or chartered psychologist (s 208(1)(b)),

he may, with the consent of the offender, make arrangements for him to be treated accordingly: s 208(1). Such arrangements as are mentioned in s 208(1) may provide for the offender to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the relevant order: s 208(2). Where any such arrangements are made for the treatment of an offender:

273 (i) the medical practitioner or registered psychologist by whom the arrangements are made must give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out (s 208(3)(a) (amended by SI 2009/1357)); and

274 (ii) the treatment provided for by the arrangements is deemed to be treatment to which he is required to submit in pursuance of the relevant order (Criminal Justice Act 2003 s 208(3)(b)).

In ss 207, 208, 'registered psychologist' means a person registered in the part of the register maintained under the Health Professions Order 2001, SI 2002/254, which relates to practitioner psychologists: s 207(6). As to the meaning of 'responsible officer' see PARA 104 note 7.

4 Criminal Justice Act 2003 s 207(1) (amended by SI 2009/1182). For general provisions relating to mental health treatment requirements see PARA 278.

5 Is approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 482-484).

6 The provisions of the Mental Health Act 1983 s 54(2), (3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492) have effect with respect to proof for the purposes of the Criminal Justice Act 2003 s 207(3)(a) of an offender's mental condition as they have effect with respect to proof of an offender's mental condition for the purposes of the Mental Health Act 1983 s 37(2)(a) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491): Criminal Justice Act 2003 s 207(5). As to hospital orders and guardianship orders see PARA 332 et seq.

7 Criminal Justice Act 2003 s 207(3)(a)(i).

8 Criminal Justice Act 2003 s 207(3)(a)(ii).

9 Criminal Justice Act 2003 s 207(3)(b). While the offender is under treatment as a resident patient in pursuance of a mental health treatment requirement, his responsible officer must carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order: s 207(4).

10 Criminal Justice Act 2003 s 207(3)(c).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/279. Drug rehabilitation requirement.

279. Drug rehabilitation requirement.

'Drug rehabilitation requirement', in relation to a community order¹ or suspended sentence order², means a requirement that during a period specified in the order (the 'treatment and testing period')³ the offender:

- 921 (1) must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs⁴; and
- 922 (2) for the purpose of ascertaining whether he has any drug in his body during that period, must provide samples of such description as may be so determined, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the responsible officer⁵ or by the person specified as the person by or under whose direction the treatment is to be provided⁶.

A court may not impose a drug rehabilitation requirement unless:

- 923 (a) it is satisfied that the offender is dependent on, or has a propensity to misuse, drugs⁷ and that his dependency or propensity is such as requires and may be susceptible to treatment⁸;
- 924 (b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident)⁹;
- 925 (c) the requirement has been recommended to the court by as being suitable for the offender by an appropriate probation officer¹⁰; and
- 926 (d) the offender expresses his willingness to comply with the requirement¹¹.

The required treatment for any particular period must be treatment as a resident in such institution or place as may be specified in the order¹² or treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified¹³; but the nature of the treatment is not to be otherwise specified in the order¹⁴.

1 As to community orders see PARAS 168-194; as to community sentences generally see PARAS 163-166.

2 As to suspended sentence orders see PARAS 110-138.

3 The treatment and testing period must be at least six months: Criminal Justice Act 2003 s 209(3). The Secretary of State may by order amend s 209(3) by substituting, for any period for the time being specified therein, such other period as may be specified in the order: s 223(2), (3)(c). At the date at which this volume states the law no such order had been made.

4 Criminal Justice Act 2003 s 209(1)(a). For these purposes 'drug' means a controlled drug as defined by the Misuse of Drugs Act 1971 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770); Criminal Justice Act 2003 s 209(7). For general provisions relating to a drug rehabilitation requirement see PARAS 279-280 (noting in particular PARA 280 (reviews of drug rehabilitation requirements)).

5 As to the meaning of 'responsible officer' see PARA 104 note 7. A community order or suspended sentence order imposing a drug rehabilitation requirement must provide that the results of tests carried out on any

samples provided by the offender in pursuance of the requirement to a person other than the responsible officer are to be communicated to the responsible officer: Criminal Justice Act 2003 s 209(6).

6 Criminal Justice Act 2003 s 209(1)(b). The function of making a determination as to the provision of samples under provision included in the community order or suspended sentence order by virtue of s 209(1)(b) is to be exercised in accordance with guidance given from time to time by the Secretary of State: s 209(5).

7 Criminal Justice Act 2003 s 209(2)(a)(i).

8 Criminal Justice Act 2003 s 209(2)(a)(ii).

9 Criminal Justice Act 2003 s 209(2)(b).

10 Criminal Justice Act 2003 s 209(2)(c). By virtue of s 209(2)(c) (s 209(2)(c)(i), (ii) amended by SI 2008/912; and substituted by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 88, subject to a saving in respect of offences committed before 30 November 2009 (see Sch 27 para 1)), the recommendation is required to have been made:

275 (1) in the case of an offender aged 18 or over, by an officer of a local probation board or an officer of a provider of probation services (Criminal Justice Act 2003 s 209(2)(c)(i) (as so amended and substituted)); and

276 (2) in the case of an offender aged under 18, by an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team (s 209(2)(c)(ii) (as so amended and substituted)).

As to the increase in the age limit for community orders from 16 to 18 (necessitating the amendments described above) see PARAS 163, 168, 169. As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17; as to local probation boards and providers of probation services see PARA 733 et seq; as to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

11 Criminal Justice Act 2003 s 209(2)(d).

12 Criminal Justice Act 2003 s 209(4)(a). Where a relevant order imposes a drug rehabilitation requirement the court by which the order is made must also forthwith provide the person in charge of the institution or place specified under s 209(4) with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14.

13 Criminal Justice Act 2003 s 209(4)(b).

14 Criminal Justice Act 2003 s 209(4).

UPDATE

279 Drug rehabilitation requirement

NOTES 7-11--See *A-G's Reference (No 101 of 2009)*; *R v Matheson* [2010] All ER (D) 130 (Feb), CA.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/280. Review of drug rehabilitation requirement.

280. Review of drug rehabilitation requirement.

A community order¹ or suspended sentence order² imposing a drug rehabilitation requirement³ may (and must if the treatment and testing period is more than 12 months⁴):

- 927 (1) provide for the requirement to be reviewed periodically at intervals of not less than one month⁵;
- 928 (2) provide for each review of the requirement to be made⁶ at a hearing held for the purpose by the court responsible for the order (a 'review hearing')⁷;
- 929 (3) require the offender to attend each review hearing⁸;
- 930 (4) provide for the responsible officer to make to the court responsible for the order⁹, before each review, a report in writing on the offender's progress under the requirement¹⁰; and
- 931 (5) provide for each such report to include the test results communicated to the responsible officer¹¹ and the views of the treatment provider as to the treatment and testing of the offender¹².

At a review hearing¹³ the court may, after considering the responsible officer's report, amend the community order or suspended sentence order, so far as it relates to the drug rehabilitation requirement¹⁴. The court:

- 932 (a) may not amend the drug rehabilitation requirement unless the offender expresses his willingness to comply with the requirement as amended¹⁵;
- 933 (b) may not amend any provision of the order so as to reduce the period for which the drug rehabilitation requirement has effect below the specified minimum¹⁶; and
- 934 (c) except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending¹⁷.

If the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may revoke the community order, or the suspended sentence order and the suspended sentence to which it relates¹⁸, and deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made¹⁹.

If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place²⁰. At that hearing the court, after considering that report, may exercise its powers²¹ as if the hearing were a review hearing²² and so amend the order as to provide for each subsequent review to be made at a review hearing²³.

1 As to community orders see PARAS 168-194; as to community sentences generally see PARAS 163-166.

2 As to suspended sentence orders see PARAS 110-138.

3 See PARA 279.

4 As to the treatment and testing period see PARA 279.

5 Criminal Justice Act 2003 s 210(1)(a).

6 Is subject to the Criminal Justice Act 2003 s 211(6) (see the text and note 7).

7 Criminal Justice Act 2003 s 210(1)(b). If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may amend the order as to provide for each subsequent review to be made by the court without a hearing: s 211(6). For these purposes, reference to the court, in relation to a review without a hearing, is to be read: (1) in the case of the Crown Court, as a reference to a judge of the court (s 211(9)(a)); (2) in the case of a magistrates' court, as a reference to a justice of the peace (s 211(9)(b) (amended by SI 2005/886)). As to the meaning of 'responsible officer' see PARA 104 note 7.

8 Criminal Justice Act 2003 s 210(1)(c).

9 In the Criminal Justice Act 2003 s 210 references to the court responsible for a community order or suspended sentence order imposing a drug rehabilitation requirement are references:

277 (1) where a court is specified in the order in accordance with s 210(3), to that court (s 210(2)(a));

278 (2) in any other case, to the court by which the order is made (s 210(2)(b)).

Where the area specified in a community order or suspended sentence order which is made by a magistrates' court and imposes a drug rehabilitation requirement is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purposes of s 210(2) a magistrates' court which acts for the area specified in the order: s 210(3).

Where a community order or suspended sentence order imposing a drug rehabilitation requirement has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, for the purposes of s 210(1)(b) it is to be taken to have been made by the Crown Court: s 210(4).

10 Criminal Justice Act 2003 s 210(1)(d).

11 Is under the Criminal Justice Act 2003 s 209(6) (see PARA 279) or otherwise.

12 Criminal Justice Act 2003 s 210(1)(e).

13 Is within the meaning given by the Criminal Justice Act 2003 s 210(1): see the text and notes 1-12.

14 Criminal Justice Act 2003 s 211(1).

15 Criminal Justice Act 2003 s 211(2)(a).

16 Criminal Justice Act 2003 s 211(2)(b). The 'specified minimum' is that specified by s 209(3) (see PARA 279).

17 Criminal Justice Act 2003 s 211(2)(c).

18 Criminal Justice Act 2003 s 211(3)(a).

19 Criminal Justice Act 2003 s 211(3)(b). In so dealing with the offender, the court must take into account the extent to which the offender has complied with the requirements of the order (s 211(4)(a)) and may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in s 152(2) (see PARA 19) (s 211(4)(b)).

20 Criminal Justice Act 2003 s 211(7).

21 Is the powers conferred by the Criminal Justice Act 2003 s 211.

22 Criminal Justice Act 2003 s 211(8)(a).

23 Criminal Justice Act 2003 s 211(8)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/281. Alcohol treatment requirement.

281. Alcohol treatment requirement.

'Alcohol treatment requirement', in relation to a community order¹ or suspended sentence order², means a requirement that the offender must submit during a period specified in the order to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol³.

A court may not impose an alcohol treatment requirement in respect of an offender unless:

- 935 (1) it is satisfied that he is dependent on alcohol⁴;
- 936 (2) it is satisfied that his dependency is such as requires and may be susceptible to treatment⁵;
- 937 (3) it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident)⁶; and
- 938 (4) the offender expresses his willingness to comply with its requirements⁷.

The treatment required by an alcohol treatment requirement for any particular period must be:

- 939 (a) treatment as a resident in such institution or place as may be specified in the order⁸;
- 940 (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified⁹; or
- 941 (c) treatment by or under the direction of such person having the necessary qualification or experience as may be so specified¹⁰,

but the nature of the treatment may not otherwise be specified in the order¹¹.

1 As to community orders see PARAS 168-194; as to community sentences generally see PARAS 163-166.

2 As to suspended sentence orders see PARAS 110-138.

3 Criminal Justice Act 2003 s 212(1). The period for which the alcohol treatment requirement has effect must be not less than six months: s 212(4). The Secretary of State may by order amend s 212(4) by substituting, for any period for the time being specified therein, such other period as may be specified in the order: s 223(2), (3) (d). At the date at which this volume states the law no such order had been made. For general provisions relating to an alcohol treatment requirement see PARA 281.

4 Criminal Justice Act 2003 s 212(2)(a).

5 Criminal Justice Act 2003 s 212(2)(b).

6 Criminal Justice Act 2003 s 212(2)(c).

7 Criminal Justice Act 2003 s 212(3).

8 Criminal Justice Act 2003 s 212(5)(a). Where a relevant order imposes an alcohol treatment requirement the court by which the order is made must also forthwith provide the person specified under s 212(5)(c) or the person in charge of the institution or place specified under s 212(5)(a) or (b) with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14.

- 9 Criminal Justice Act 2003 s 212(5)(b). See note 8.
- 10 Criminal Justice Act 2003 s 212(5)(c). See note 8.
- 11 Criminal Justice Act 2003 s 212(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/282. Supervision requirement.

282. Supervision requirement.

'Supervision requirement', in relation to a relevant order¹, means a requirement that, during the relevant period², the offender must attend appointments with the responsible officer³ or another person determined by the responsible officer, at such time and place as may be determined by the officer⁴. The purpose for which a supervision requirement may be imposed is that of promoting the offender's rehabilitation⁵.

¹ I.e. a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

² I.e.:

279 (1) in relation to a community order (see PARAS 168-194), the period for which the community order remains in force (s 213(3)(a));

280 (2) as from a day to be appointed, in relation to a custody plus order (see PARAS 98-109), the licence period as defined by s 181(3)(b) (see PARA 98) (s 213(3)(b) (not yet in force));

281 (3) in relation to an intermittent custody order (see PARA 100), the licence periods as defined by s 183(3) (see PARA 100) (s 213(3)(c)); and

282 (4) in relation to a suspended sentence order (see PARAS 110-138), the supervision period as defined by s 189(1)(a) (see PARA 110) (s 213(3)(d)).

³ As to the meaning of 'responsible officer' see PARA 104 note 7.

⁴ Criminal Justice Act 2003 s 213(1). For general provisions relating to a supervision requirement see PARA 282.

⁵ Criminal Justice Act 2003 s 213(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/283. Attendance centre requirement.

283. Attendance centre requirement.

'Attendance centre requirement', in relation to a relevant order¹ made in respect of an offender aged under 25², means a requirement that the offender must attend at an attendance centre³ specified in the relevant order for such number of hours as may be so specified⁴. The court may not impose an attendance centre requirement unless it:

- 942 (1) has been notified by the Secretary of State that an attendance centre is available for persons of the offender's description⁵; and
- 943 (2) is satisfied that the attendance centre to be specified in the order is reasonably accessible to the offender, having regard to the means of access available to him and any other circumstances⁶.

A requirement to attend at an attendance centre for any period on any occasion operates as a requirement, during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere⁷.

¹ ie a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

² Attendance centre requirements may be imposed only in respect of offenders aged under 25: see the Criminal Justice Act 2003 ss 177(1)(l), 182(1)(h), 183(1)(b)(ii), 190(1)(l); and PARAS 99, 101, 112, 169. As to the age of an offender for sentencing purposes see PARA 27.

³ The Secretary of State may continue to provide attendance centres: Criminal Justice Act 2003 s 221(1). In Pt 12 (ss 142-305), 'attendance centre' means a place at which offenders aged under 25 may be required to attend and be given under supervision appropriate occupation or instruction in pursuance of:

- 283 (1) attendance centre requirements of relevant orders (s 221(2)(a));
- 284 (2) default orders under the Criminal Justice Act 2003 s 300 (s 221(2)(c) (s 221(2)(c), (d) added by the Criminal Justice and Immigration Act 2008 Sch 26 paras 1, 2(1), (2)));
- 285 (3) youth default orders under the Criminal Justice and Immigration Act 2008 s 39 (Criminal Justice Act 2003 s 221(2)(d) (as so added));
- 286 (4) attendance centre requirements of youth rehabilitation orders within the meaning of the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8) (see PARA 202) (Criminal Justice Act 2003 s 221(2)(aa) (added by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 92(b))); and
- 287 (5) until a day to be appointed, attendance centre orders under the Powers of Criminal Courts (Sentencing) Act 2000 s 60 (see PARA 267) (Criminal Justice Act 2003 s 221(2)(b) (prospectively repealed by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 92(c), Sch 28 Pt 1)). At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

As to attendance centres see **PRISONS** vol 36(2) (Reissue) PARAS 692-693. For the purpose of providing attendance centres, the Secretary of State may make arrangements with any local authority or police authority for the use of premises of that authority: Criminal Justice Act 2003 s 221(3). Where a relevant order imposes an attendance centre requirement the court by which the order is made must also forthwith provide the officer in charge of the attendance centre specified in the requirement with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14.

In relation to the transfer of suspended sentence orders or community orders to Northern Ireland (as to which see PARAS 130-131, 190-193) any reference in s 214 to an attendance centre has effect as a reference to a day centre, as defined by the Criminal Justice (Northern Ireland) Order 1996, SI 1996/3160 (NI 24), Sch 1 para 36: see the Criminal Justice Act 2003 Sch 9 para 4(1), (5), Sch 13 para 9(1), (5).

4 Criminal Justice Act 2003 s 214(1). The aggregate number of hours for which the offender may be required to attend at an attendance centre must not be less than 12 or more than 36: s 214(2). The first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer (s 214(4)), and the subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances (s 214(5)). An offender may not be required under these provisions to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion: s 214(6). For general provisions relating to an attendance centre requirement see PARA 300. As to the meaning of 'responsible officer' see PARA 104 note 7.

5 Criminal Justice Act 2003 s 218(3).

6 Criminal Justice Act 2003 s 214(3).

7 Criminal Justice Act 2003 s 214(7) (added by the Criminal Justice and Immigration Act 2008 Sch 4 paras 71, 90).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/284. Electronic monitoring requirement.

284. Electronic monitoring requirement.

'Electronic monitoring requirement', in relation to a relevant order¹, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period specified in the order, or determined by the responsible officer² in accordance with the relevant order³.

Where:

- 944 (1) it is proposed to include in a relevant order a requirement for securing⁴ electronic monitoring⁵; but
- 945 (2) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring⁶,

the requirement may not be included in the order without that person's consent⁷. Moreover, a court may not include an electronic monitoring requirement in a relevant order in respect of an offender unless the court has been notified by the Secretary of State that electronic monitoring arrangements are available in the specified relevant areas⁸ and it is satisfied that the necessary provision can be made under those arrangements⁹.

A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and¹⁰ a person who is made so responsible must be of a description specified in an order¹¹ made by the Secretary of State¹².

Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify:

- 946 (a) the offender¹³;
- 947 (b) the person responsible for the monitoring¹⁴; and
- 948 (c) any person falling within head (2) above¹⁵,

of the time when the period is to begin¹⁶.

¹ I.e. a custody plus order, an intermittent custody order, a suspended sentence order or a community order: see PARAS 98, 100, 110, 168 et seq.

² As to the meaning of 'responsible officer' see PARA 104 note 7.

³ Criminal Justice Act 2003 s 215(1). For general provisions relating to an electronic monitoring requirement see PARA 284.

⁴ I.e. in accordance with the Criminal Justice Act 2003 s 215.

⁵ Criminal Justice Act 2003 s 215(2)(a).

⁶ Criminal Justice Act 2003 s 215(2)(b).

⁷ Criminal Justice Act 2003 s 215(2).

8 Criminal Justice Act 2003 s 218(4)(a). In the case of a relevant order containing a curfew requirement (see PARA 275) or an exclusion requirement (see PARA 276), the relevant area for the purposes of s 218(4) is the area in which the place proposed to be specified in the order is situated: s 218(5). In relation to an exclusion requirement, 'place' has the same meaning as in s 205 (see PARA 276): s 218(8). In the case of a relevant order containing an attendance centre requirement (see PARA 283), the relevant area for the purposes of s 218(4) is the area in which the attendance centre proposed to be specified in the order is situated: s 218(6). In the case of any other relevant order, the relevant area for the purposes of s 218(4) is the local justice area proposed to be specified in the order: s 218(7) (amended by SI 2005/886).

The Criminal Justice Act 2003 218(4) does not apply in relation to the transfer of custody plus orders, intermittent custody orders, suspended sentence orders or community orders to Scotland or Northern Ireland (as to which see PARAS 108-109, 130-131, 190-193): see Sch 9 paras 2(1), (3)(d), 4(1), (3)(d), Sch 11 paras 7(1), (3)(c), 13(1), (3)(c), Sch 13 paras 4(1), (3)(d), 9(1), (3)(d).

9 Criminal Justice Act 2003 s 218(4)(b). See note 8.

10 Ie except in relation to the transfer of custody plus orders, intermittent custody orders, suspended sentence orders or community orders to Scotland or Northern Ireland (as to which see PARAS 108-109, 130-131, 190-193): see the Criminal Justice Act 2003 Sch 9 paras 2(1), (5), 4(1), (6), Sch 11 paras 7(1), (4), 13(1), (5), Sch 13 paras 4(1), (5), 9(1), (6).

11 As to the person responsible for the monitoring of an electronic monitoring requirement for these purposes see the Criminal Justice (Sentencing) (Programme and Electronic Monitoring Requirements) Order 2005, SI 2005/963.

12 Criminal Justice Act 2003 s 215(3). Where a relevant order imposes an electronic monitoring requirement the court by which the order is made must also forthwith provide any person who by virtue of s 215(3) will be responsible for the electronic monitoring and any person by virtue of whose consent the requirement is included in the order with a copy of so much of the order as relates to that requirement: s 219(2), Sch 14.

13 Criminal Justice Act 2003 s 215(4)(a).

14 Criminal Justice Act 2003 s 215(4)(b).

15 Criminal Justice Act 2003 s 215(4)(c).

16 Criminal Justice Act 2003 s 215(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(1) REQUIREMENTS FOR CUSTODIAL AND COMMUNITY SENTENCES/285. Rules.

285. Rules.

The Secretary of State may make rules for regulating:

- 949 (1) the supervision of persons who are subject to relevant orders¹;
- 950 (2) without prejudice to the generality of head (1) above, the functions of responsible officers² in relation to offenders subject to relevant orders³;
- 951 (3) the arrangements to be made by local probation boards or providers of probation services⁴ for persons subject to unpaid work requirements⁵ to perform work and the performance of such work⁶;
- 952 (4) the provision and carrying on of attendance centres⁷ and community rehabilitation centres⁸;
- 953 (5) the attendance of persons subject to activity requirements⁹ or attendance centre requirements¹⁰ at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records¹¹;
- 954 (6) electronic monitoring in pursuance of an electronic monitoring requirement¹²; and
- 955 (7) without prejudice to the generality of head (6) above, the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement¹³.

At the date at which this volume states the law no rules had been made for these purposes.

1 Criminal Justice Act 2003 s 222(1)(a). As to relevant orders see PARAS 98, 100, 110, 168 et seq.

2 As to the meaning of 'responsible officer' see PARA 104 note 7.

3 Criminal Justice Act 2003 s 222(1)(b).

4 As to the meaning of 'local probation board' see PARA 98 note 17; as to local probation boards and providers of probation services see PARA 733 et seq.

5 See PARA 271.

6 Criminal Justice Act 2003 s 222(1)(c) (amended by SI 2008/912). Rules under the Criminal Justice Act 2003 s 222(1)(c) may, in particular, make provision:

288 (1) limiting the number of hours of work to be done by a person on any one day (s 222(2)(a));

289 (2) as to the reckoning of hours worked and the keeping of work records (s 222(2)(b)); and

290 (3) for the payment of travelling and other expenses in connection with the performance of work (s 222(2)(c)).

7 See PARA 283 note 3.

8 Criminal Justice Act 2003 s 222(1)(d). As to community rehabilitation centres see PARA 272 note 2.

9 See PARA 272.

10 See PARA 283. The reference to attendance centre requirements includes a reference to attendance centre requirements imposed by youth rehabilitation orders under the Criminal Justice and Immigration Act

2008 Pt 1 (ss 1-8) (see PARA 202 et seq): Criminal Justice Act 2003 s 222(1)(e) (amended by the Criminal Justice and Immigration Act 2008 s 6(2), Sch 4 paras 71, 93).

11 Criminal Justice Act 2003 s 222(1)(e) (as amended: see note 10).

12 Criminal Justice Act 2003 s 222(1)(e). As to electronic monitoring requirements see PARA 284.

13 Criminal Justice Act 2003 s 222(1)(f).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/286. Requirements which may be imposed.

(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS

286. Requirements which may be imposed.

A youth rehabilitation order¹ may impose any one of the following requirements:

- 956 (1) an unpaid work requirement²;
- 957 (2) an activity requirement³;
- 958 (3) a programme requirement⁴;
- 959 (4) a prohibited activity requirement⁵;
- 960 (5) a curfew requirement⁶;
- 961 (6) an exclusion requirement⁷;
- 962 (7) a residence requirement⁸;
- 963 (8) a mental health treatment requirement⁹;
- 964 (9) a drug treatment requirement¹⁰;
- 965 (10) a drug testing requirement¹¹;
- 966 (11) an intoxicating substance treatment requirement¹²;
- 967 (12) a supervision requirement¹³;
- 968 (13) an electronic monitoring requirement¹⁴;
- 969 (14) an attendance centre requirement¹⁵;
- 970 (15) a local authority residence requirement¹⁶;
- 971 (16) a fostering requirement¹⁷; and
- 972 (17) an education requirement¹⁸.

A youth rehabilitation order may also be made with intensive supervision and surveillance¹⁹.

Where a youth rehabilitation order has effect, it is the duty of the responsible officer²⁰ to make any arrangements that are necessary in connection with the requirements imposed by the order, to promote the offender's compliance with those requirements, and where appropriate, to take steps to enforce those requirements²¹. In giving instructions in pursuance of a youth rehabilitation order relating to an offender, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid any conflict with the offender's religious beliefs, any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment and any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject²².

An offender in respect of whom a youth rehabilitation order is in force must keep in touch with the responsible officer in accordance with such instructions as the offender may from time to time be given by that officer and must notify the responsible officer of any change of address²³.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

² See the Criminal Justice and Immigration Act 2008 Sch 1 para 10; and PARA 287.

³ See the Criminal Justice and Immigration Act 2008 Sch 1 para 6; and PARA 288.

⁴ See the Criminal Justice and Immigration Act 2008 Sch 1 para 11; and PARA 289.

5 See the Criminal Justice and Immigration Act 2008 Sch 1 para 13; and PARA 290.

6 See the Criminal Justice and Immigration Act 2008 Sch 1 para 14; and PARA 291.

7 See the Criminal Justice and Immigration Act 2008 Sch 1 para 15; and PARA 292.

8 See the Criminal Justice and Immigration Act 2008 Sch 1 para 16; and PARA 293.

9 See the Criminal Justice and Immigration Act 2008 Sch 1 para 20; and PARA 294.

10 See the Criminal Justice and Immigration Act 2008 Sch 1 para 22; and PARA 295.

11 See the Criminal Justice and Immigration Act 2008 Sch 1 para 23; and PARA 296.

12 See the Criminal Justice and Immigration Act 2008 Sch 1 para 24; and PARA 297.

13 See the Criminal Justice and Immigration Act 2008 Sch 1 para 9; and PARA 298.

14 See the Criminal Justice and Immigration Act 2008 Sch 1 para 26; and PARA 299.

15 See the Criminal Justice and Immigration Act 2008 Sch 1 para 12; and PARA 300.

16 See the Criminal Justice and Immigration Act 2008 Sch 1 para 17; and PARA 301.

17 See the Criminal Justice and Immigration Act 2008 Sch 1 para 18; and PARA 302.

18 See the Criminal Justice and Immigration Act 2008 Sch 1 para 25; and PARA 303.

19 See, in particular, the Criminal Justice and Immigration Act 2008 s 1(3), (4); and PARA 204.

20 As to the meaning of 'responsible officer' see PARA 212 note 1. However for the purposes of the Criminal Justice and Immigration Act 2008 s 5(1) 'responsible officer' does not include a person falling within s 4(1)(a): s 5(2).

21 Criminal Justice and Immigration Act 2008 s 5(1).

22 Criminal Justice and Immigration Act 2008 s 5(3). The Secretary of State may by order provide that s 5(3) is to have effect with such additional restrictions as may be specified in the order: s 5(4). At the date at which this volume states the law no such order had been made.

23 Criminal Justice and Immigration Act 2008 s 5(5). The obligation imposed by s 5(5) is enforceable as if it were a requirement imposed by the order: s 5(6).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/287. Unpaid work requirement.

287. Unpaid work requirement.

'Unpaid work requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must perform unpaid work for a specified number of hours². A court may not impose an unpaid work requirement in respect of an offender unless:

- 973 (1) after hearing (if the court thinks necessary) an appropriate officer³, the court is satisfied that the offender is a suitable person to perform work under such a requirement⁴; and
- 974 (2) the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which the offender resides or is to reside⁵.

An offender in respect of whom an unpaid work requirement of a youth rehabilitation order is in force must perform for the number of hours specified in the order such work at such times as the responsible officer may specify in instructions⁶. The work required to be performed under an unpaid work requirement of a youth rehabilitation order must⁷ be performed during the period of 12 months beginning with the day on which the order takes effect⁸. Unless revoked, a youth rehabilitation order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it⁹.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 See the Criminal Justice and Immigration Act 2008 Sch 1 para 10(1). The number of hours which a person may be required to work under an unpaid work requirement must be specified in the youth rehabilitation order and must be, in aggregate not less than 40 and not more than 240: Sch 1 para 10(2). Where the court is dealing with the offender under Sch 2 para 6(2)(b) (see PARA 214) or Sch 2 para 8(2)(b) (see PARA 215) and the youth rehabilitation order does not contain an unpaid work requirement, Sch 1 para 10(2) applies in relation to the inclusion of such a requirement as if for '40' there were substituted '20': see Sch 2 paras 6(7), 8(7). The Secretary of State may by order amend Sch 1 para 10(2) by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order: Sch 1 para 27(1). At the date at which this volume states the law no such order had been made.

3 For this purpose 'appropriate officer' means a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services: Criminal Justice and Immigration Act 2008 Sch 1 para 10(4). As to the meanings of 'local probation board' and 'youth offending team' see PARA 202 note 3.

4 Criminal Justice and Immigration Act 2008 Sch 1 para 10(3)(a).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 10(3)(b).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 10(5). As to the meaning of 'responsible officer' see PARA 212 note 1 and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

7 This duty is subject to the Criminal Justice and Immigration Act 2008 Sch 2 para 17 (extension of unpaid work requirement: see PARA 220).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 10(6).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 10(7).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/288. Activity requirement.

288. Activity requirement.

'Activity requirement', in relation to a youth rehabilitation order¹ means a requirement that the offender must do any or all of the following:

- 975 (1) participate, on such number of days as may be specified in the order, in activities at a place, or places, so specified²;
- 976 (2) participate in an activity, or activities, specified in the order on such number of days as may be so specified³;
- 977 (3) participate in one or more residential exercises for a continuous period or periods comprising such number or numbers of days as may be specified in the order⁴;
- 978 (4) engage in activities in accordance with instructions of the responsible officer⁵ on such days as may be specified in the order⁶.

A requirement, such as is mentioned in head (1) or (2), operates to require the offender, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement:

- 979 (a) in the case of a requirement such as is mentioned in head (1) to present himself or herself at a place specified in the order to a person of a description so specified⁷;
- 980 (b) in the case of a requirement such as is mentioned in head (2) to participate in an activity specified in the order⁸.

Where the order requires the offender to participate in a residential exercise, it must specify, in relation to the exercise a place⁹ or an activity¹⁰.

An activity specified in head (2), or in instructions given under head (4), may consist of or include an activity whose purpose is that of reparation, such as an activity involving contact between an offender and persons affected by the offences in respect of which the order was made¹¹.

A court may not include an activity requirement in a youth rehabilitation order unless it has consulted a member of a youth offending team, an officer of a local probation board¹² or an officer of a provider of probation services¹³. Nor may the court include an activity requirement in a youth rehabilitation order unless it is satisfied that it is feasible to secure compliance with the requirement and that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the local justice area in which the offender resides or is to reside¹⁴.

A court may not include an activity requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion¹⁵.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq. A youth rehabilitation order may impose an extended activity requirement known as a youth rehabilitation order with intensive supervision and surveillance: see PARA 204.

2 Criminal Justice and Immigration Act 2008 Sch 1 para 6(1)(a). Subject to Sch 1 para 3(2) the number of days specified in the order under Sch 1 para 6(1)(a) must not in aggregate be more than 90: Sch 1 para 6(2).

3 Criminal Justice and Immigration Act 2008 Sch 1 para 6(1)(b).

4 Criminal Justice and Immigration Act 2008 Sch 1 para 6(1)(c).

5 As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

6 Criminal Justice and Immigration Act 2008 Sch 1 para 6(1)(d). This requirement is in accordance with Sch 1 para 7 whereby instructions under head (4) in the text relating to any day must require the offender to either present himself or herself to a person or persons of a description specified in the instructions at a place so specified or to participate in an activity specified in the instructions: Sch 1 para 7(1). Any such instructions operate to require the offender, on that day, or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or, as the case may be, the activity: Sch 1 para 7(2). If the order so provides, instructions under head (4) in the text may require the offender to participate in a residential exercise for a period comprising not more than seven days, and, for that purpose to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place so specified and to reside there for that period or to participate for that period in an activity specified in the instructions: Sch 1 para 7(3). Such instructions operate to require the offender, during the period specified under Sch 1 para 7(3), to comply with instructions given by, or under the authority of, the person in charge of the specified place or activity (as the case may be): Sch 1 para 7(4)(b). However instructions under Sch 1 para 7(3) may not be given except with the consent of a parent or guardian of the offender: Sch 1 para 7(4)(a). As to the parent or guardian of the offender see PARA 202 note 3. Instructions given by, or under the authority of, a person in charge or any place under Sch 1 para 7(2) or Sch 1 para 7(4)(b) may require the offender to engage in activities otherwise than at that place: Sch 1 para 8(1).

7 Criminal Justice and Immigration Act 2008 Sch 1 para 6(3)(a). Instructions given by, or under the authority of, a person in charge or any place under Sch 1 para 6(3) may require the offender to engage in activities otherwise than at that place: Sch 1 para 8(1).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 6(3)(b).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 6(4)(a). If a place is so specified a requirement to participate in a residential exercise operates to require the offender, in accordance with instructions given by the responsible officer, to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place so specified to a person of a description specified in the instructions and to reside there for that period (Sch 1 para 6(5)(a)), and during that period, to comply with instructions given by, or under the authority of the person in charge of the place or the activity (as the case may be) (Sch 1 para 6(5)).

10 Criminal Justice and Immigration Act 2008 Sch 1 para 6(4)(b). If an activity is specified a requirement to participate in a residential exercise operates to require the offender, in accordance with instructions given by the responsible officer, to participate, for the period specified in the order in relation to the exercise, in the activity so specified (Sch 1 para 6(5)(b)) and, during that period, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be) (Sch 1 para 6(5)). Instructions given by, or under the authority of, a person in charge or any place under Sch 1 para 6(5) may require the offender to engage in activities otherwise than at that place: Sch 1 para 8(1).

11 Criminal Justice and Immigration Act 2008 Sch 1 para 8(2).

12 As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17.

13 Criminal Justice and Immigration Act 2008 Sch 1 para 8(3)(a).

14 Criminal Justice and Immigration Act 2008 Sch 1 para 8(3)(b), (c).

15 Criminal Justice and Immigration Act 2008 Sch 1 para 8(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/289. Programme requirement.

289. Programme requirement.

'Programme requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must participate in a systematic set of activities (a 'programme') specified in the order at a place or places so specified on such number of days as may be so specified². A programme requirement may require the offender to reside at any place so specified in the order or any period so specified if it is necessary for the offender to reside there for that period in order to participate in the programme³.

A court may not include a programme requirement in a youth rehabilitation order unless:

- 981 (1) the programme which the court proposes to specify in the order has been recommended to the court by a member of a youth offending team, an officer of a local probation board⁴ or an officer of a provider of probation services, as being suitable for the offender⁵; and
- 982 (2) the court is satisfied that the programme is available at the place or places proposed to be specified⁶.

A court may not include a programme requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer⁷, unless that other person consents to its inclusion⁸.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 1 para 11(1). A requirement to participate in a programme operates to require the offender:

291 (1) in accordance with instructions given by the responsible officer to participate in the programme at the place or places specified in the order on the number of days so specified (Sch 1 para 11(5)(a)); and

292 (2) while at any of those places, to comply with instructions given by, or under the authority of, the person in charge of the programme (Sch 1 para 11(5)(b)).

3 Criminal Justice and Immigration Act 2008 Sch 1 para 11(2).

4 As to the meaning of 'local probation board' see PARA 202 note 3.

5 Criminal Justice and Immigration Act 2008 Sch 1 para 11(3)(a).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 11(3)(b).

7 As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

8 Criminal Justice and Immigration Act 2008 Sch 1 para 11(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/290. Prohibited activity requirement.

290. Prohibited activity requirement.

'Prohibited activity requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must refrain from participating in activities specified in the order on a day or days so specified or during a period so specified².

A court may not include a prohibited activity requirement in a youth rehabilitation order unless it has consulted a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services³.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

² Criminal Justice and Immigration Act 2008 Sch 1 para 13(1). The requirements that may by virtue of Sch 1 para 13 be included in a youth rehabilitation order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630): Criminal Justice and Immigration Act 2008 Sch 1 para 13(3).

³ Criminal Justice and Immigration Act 2008 Sch 1 para 13(2). As to the meaning of 'local probation board' see PARA 202 note 3.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/291. Curfew requirement.

291. Curfew requirement.

'Curfew requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must remain, for periods specified in the order, at a place so specified².

Before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender)³.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

² Criminal Justice and Immigration Act 2008 Sch 1 para 14(1). A youth rehabilitation order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than 12 hours in any day: Sch 1 para 14(2). A youth rehabilitation order imposing a curfew requirement may not specify periods which fall outside the period of six months beginning with the day on which the requirement first takes effect: Sch 1 para 14(3). The Secretary of State may by order amend Sch 1 para 14(2) by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order: Sch 1 para 27(1). The Secretary of State may by order amend Sch 1 para 14(3) by substituting, for any period for the time being specified in that provision, such other period as may be specified in the order: Sch 1 para 27(2), (3)(a). At the date at which this volume states the law no such order had been made.

³ Criminal Justice and Immigration Act 2008 Sch 1 para 14(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/292. Exclusion requirement.

292. Exclusion requirement.

'Exclusion requirement', in relation to a youth rehabilitation order¹, means a provision prohibiting the offender from entering a place² specified in the order for a period so specified³.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

² For this purpose 'place' includes an area: Criminal Justice and Immigration Act 2008 Sch 1 para 15(4).

³ Criminal Justice and Immigration Act 2008 Sch 1 para 15(1). The period must not be more than three months: Sch 1 para 15(2). The Secretary of State may by order amend Sch 1 para 15(2) by substituting, for any period for the time being specified in that provision, such other period as may be specified in the order: Sch 1 para 27(2), (3)(b). At the date at which this volume states the law no such order had been made. An exclusion requirement may provide for the prohibition to operate only during the periods specified in the order and may specify different places for different periods or days: Sch 1 para 15(3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/293. Residence requirement.

293. Residence requirement.

'Residence requirement', in relation to a youth rehabilitation order¹, means a requirement that, during the period specified in the order, the offender must reside with an individual specified in the order² or at a place specified in the order³. Before making a youth rehabilitation order containing a place of residence requirement, the court must consider the home surroundings of the offender⁴.

A court may not include a place of residence requirement in a youth rehabilitation order unless the offender was aged 16 or over at the time of conviction⁵.

If the order so provides, a place of residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer⁶, at a place other than that specified in the order⁷.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 1 para 16(1)(a). A court may not by virtue of Sch 1 para 16(1)(a) include in a youth rehabilitation order a requirement that the offender reside with an individual unless that individual has consented to the requirement: Sch 1 para 16(2).

3 Criminal Justice and Immigration Act 2008 Sch 1 para 16(1)(b). A residence requirement falling within Sch 1 para 16(1)(b) is referred to as a 'place of residence requirement': Sch 1 para 16(3). A court may not specify a hostel or other institution as the place where an offender must reside for the purposes of a place of residence requirement except on the recommendation of a member of a youth offending team, an officer of a local probation board, an officer of a provider of probation services or a social worker of a local authority: Sch 1 para 16(7). As to the meanings of 'local probation board', 'youth offending team' and 'local authority' see PARA 202 note 3.

4 Criminal Justice and Immigration Act 2008 Sch 1 para 16(6).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 16(4).

6 As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

7 Criminal Justice and Immigration Act 2008 Sch 1 para 16(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/294. Mental health treatment requirement.

294. Mental health treatment requirement.

'Mental health treatment requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment² by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender's mental condition³.

A court may not include a mental health treatment requirement in a youth rehabilitation order unless:

- 983 (1) the court is satisfied, on the evidence of an approved⁴ registered medical practitioner, that the mental condition of the offender⁵ is such as requires and may be susceptible to treatment⁶ but is not such as to warrant the making of a hospital order or guardianship order⁷;
- 984 (2) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident patient, arrangements for the reception of the offender)⁸; and
- 985 (3) the offender has expressed willingness to comply with the requirement⁹.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 The treatment required during a period specified under the Criminal Justice and Immigration Act 2008 Sch 1 para 20(1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order:

- 293 (1) treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 421, 430) or a hospital within the meaning of the Mental Health Act 1983 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 418), but not in hospital premises where high security psychiatric services within the meaning of the Mental Health Act 1983 are provided (Criminal Justice and Immigration Act 2008 Sch 1 para 20(2)(a));
- 294 (2) treatment as a non-resident patient at such institution or place as may be specified in the order (Sch 1 para 20(2)(b));
- 295 (3) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified (Sch 1 para 20(2)(c) (amended by SI 2009/1182));

but the order must not otherwise specify the nature of the treatment: Criminal Justice and Immigration Act 2008 Sch 1 para 20(2).

For the purposes of Sch 1 paras 20, 21, 'registered psychologist' means a person for the time being registered in the part of the register maintained under the Health Professions Order 2001, SI 2002/254 (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 308 et seq) which relates to practitioner psychologists: Criminal Justice and Immigration Act 2008 Sch 1 para 20(6) (substituted by SI 2009/1182).

Where the registered medical practitioner or registered psychologist by whom or under whose direction an offender is being treated in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which (Criminal Justice and Immigration Act 2008 Sch 1 para 21(1) (amended by SI 2009/1182)):

- 296 (a) is not specified in the youth rehabilitation order (Criminal Justice and Immigration Act 2008 Sch 1 para 21(1)(a)); and

- 297 (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or registered psychologist (Sch 1 para 21(1)(b) (amended by SI 2009/1182)),

the medical practitioner or psychologist may make arrangements for the offender to be treated accordingly (Criminal Justice and Immigration Act 2008 Sch 1 para 21(1)). Such arrangements may only be made if the offender has expressed willingness for the treatment to be given: Sch 1 para 21(2). Such arrangements may provide for part of the treatment to be provided to the offender as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the youth rehabilitation order: Sch 1 para 21(3). Where any such arrangements are made for the treatment of an offender:

- 298 (i) the registered medical practitioner or registered psychologist by whom the arrangements are made must give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out (Sch 1 para 21(4)(a) (amended by SI 2009/1182)); and
- 299 (ii) the treatment provided for by the arrangements is deemed to be treatment to which the offender is required to submit in pursuance of the youth rehabilitation order (Criminal Justice and Immigration Act 2008 Sch 1 para 21(4)(b)).

As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 20(1) (amended by SI 2009/1182).

4 Ie approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 482-484).

5 The provisions of the Mental Health Act 1983 s 54(2), (3) have effect with respect to proof of an offender's mental condition for the purposes of Criminal Justice and Immigration Act 2008 Sch 1 para 20(3)(a) as they have effect with respect to proof of an offender's mental condition for the purposes of the Mental Health Act 1983 s 37(2)(a) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491): Criminal Justice and Immigration Act 2008 Sch 1 para 20(5).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 20(3)(a)(i).

7 Criminal Justice and Immigration Act 2008 Sch 1 para 20(3)(a)(ii). As to the meanings of 'hospital order' and 'guardianship order' see the Mental Health Act 1983; and **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 491, 486.

8 Criminal Justice and Immigration Act 2008 Sch 1 para 20(3)(b). While the offender is under treatment as a resident patient in pursuance of a mental health treatment requirement of a youth rehabilitation order, the responsible officer is to carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order: Sch 1 para 20(4).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 20(3)(c).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/295. Drug treatment requirement.

295. Drug treatment requirement.

'Drug treatment requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience (the 'treatment provider'), with a view to the reduction or elimination of the offender's dependency on, or propensity to misuse, drugs².

A court may not include a drug treatment requirement in a youth rehabilitation order unless it is satisfied that the offender is dependent on, or has a propensity to misuse, drugs and that the offender's dependency or propensity is such as requires and may be susceptible to treatment³.

The treatment required during the period specified must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order:

- 986 (1) treatment as a resident in such institution or place as may be specified in the order⁴; or
- 987 (2) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified⁵,

but the order must not otherwise specify the nature of the treatment⁶.

A court may not include a drug treatment requirement in a youth rehabilitation order unless:

- 988 (a) the court has been notified by the Secretary of State that arrangements for implementing drug treatment requirements are in force in the local justice area in which the offender resides or is to reside⁷;
- 989 (b) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender)⁸;
- 990 (c) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services⁹; and
- 991 (d) the offender has expressed willingness to comply with the requirement¹⁰.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

² Criminal Justice and Immigration Act 2008 Sch 1 para 22(1). For these purposes 'drug' means a controlled drug as defined by the Misuse of Drugs Act 1971 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770); Criminal Justice and Immigration Act 2008 Sch 1 para 22(5).

³ Criminal Justice and Immigration Act 2008 Sch 1 para 22(2).

⁴ Criminal Justice and Immigration Act 2008 Sch 1 para 22(3)(a).

⁵ Criminal Justice and Immigration Act 2008 Sch 1 para 22(3)(b).

⁶ Criminal Justice and Immigration Act 2008 Sch 1 para 22(3).

- 7 Criminal Justice and Immigration Act 2008 Sch 1 para 22(4)(a).
- 8 Criminal Justice and Immigration Act 2008 Sch 1 para 22(4)(b).
- 9 Criminal Justice and Immigration Act 2008 Sch 1 para 22(4)(c). As to the meanings of 'local probation board' and 'youth offending team' see PARA 202 note 3.
- 10 Criminal Justice and Immigration Act 2008 Sch 1 para 22(4)(d).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/296. Drug testing requirement.

296. Drug testing requirement.

'Drug testing requirement', in relation to a youth rehabilitation order¹, means a requirement that, for the purpose of ascertaining whether there is any drug² in the offender's body during any treatment period³, the offender must, during that period⁴, provide samples in accordance with instructions given by the responsible officer or the treatment provider⁵.

A court may not include a drug testing requirement in a youth rehabilitation order unless:

- 992 (1) the court has been notified by the Secretary of State that arrangements for implementing drug testing requirements are in force in the local justice area in which the offender resides or is to reside⁶;
- 993 (2) the order also imposes a drug treatment requirement⁷; and
- 994 (3) the offender has expressed willingness to comply with the requirement⁸.

A youth rehabilitation order which imposes a drug testing requirement must provide for the results of tests carried out otherwise than by the responsible officer on samples provided by the offender in pursuance of the requirement to be communicated to the responsible officer⁹.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 As to the meaning of 'drug' see Criminal Justice and Immigration Act 2008 Sch 1 para 22; and PARA 295 note 2 (definition applied by Sch 1 para 23(2)).

3 For these purposes 'treatment period' means a period specified in the youth rehabilitation order as a period during which the offender must submit to treatment as mentioned in the Criminal Justice and Immigration Act 2008 Sch 1 para 22(1) (see PARA 295): Sch 1 para 23(2).

4 A youth rehabilitation order which imposes a drug testing requirement must (1) specify for each month the minimum number of occasions on which samples are to be provided; and (2) the times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided and descriptions of the samples which may be so required: Criminal Justice and Immigration Act 2008 Sch 1 para 23(4).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 23(1). As to the meaning of 'treatment provider' see PARA 295 (definition applied by Sch 1 para 23(2)). As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

6 Criminal Justice and Immigration Act 2008 Sch 1 para 23(3)(a).

7 Criminal Justice and Immigration Act 2008 Sch 1 para 23(3)(b).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 23(3)(c).

9 Criminal Justice and Immigration Act 2008 Sch 1 para 23(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/297. Intoxicating substance treatment requirement.

297. Intoxicating substance treatment requirement.

'Intoxicating substance treatment requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience, with a view to the reduction or elimination of the offender's dependency on or propensity to misuse intoxicating substances².

The treatment required during the period so specified must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order:

- 995 (1) treatment as a resident in such institution or place as may be specified in the order³; or
- 996 (2) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified⁴,

but the order must not otherwise specify the nature of the treatment⁵.

A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless it is satisfied that the offender is dependent on, or has a propensity to misuse, intoxicating substances and that the offender's dependency or propensity is such as requires and may be susceptible to treatment⁶.

A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless:

- 997 (a) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender)⁷;
- 998 (b) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team, an officer of a local probation board⁸ or an officer of a provider of probation services⁹; and
- 999 (c) the offender has expressed willingness to comply with the requirement¹⁰.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 Criminal Justice and Immigration Act 2008 Sch 1 para 24(1). For these purposes 'intoxicating substance' means alcohol or any other substance or product (other than a drug) which is, or the fumes of which are, capable of being inhaled or otherwise used for the purpose of causing intoxication: Sch 1 para 24(5). For this purpose 'drug' means a controlled drug as defined by the Misuse of Drugs Act 1971 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770): Criminal Justice and Immigration Act 2008 Sch 1 para 24(6).

3 Criminal Justice and Immigration Act 2008 Sch 1 para 24(3)(a).

4 Criminal Justice and Immigration Act 2008 Sch 1 para 24(3)(b).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 24(3).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 24(2).

- 7 Criminal Justice and Immigration Act 2008 Sch 1 para 24(4)(a).
- 8 As to the meanings of 'local probation board' and 'youth offending team' see PARA 202 note 3.
- 9 Criminal Justice and Immigration Act 2008 Sch 1 para 24(4)(b).
- 10 Criminal Justice and Immigration Act 2008 Sch 1 para 24(4)(c).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/298. Supervision requirement.

298. Supervision requirement.

'Supervision requirement', in relation to a youth rehabilitation order¹, means a requirement that during the period for which the order remains in force, the offender must attend appointments with the responsible officer², or another person determined by the responsible officer, at such times and places as may be determined by the responsible officer³.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 9.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/299. Electronic monitoring requirement.

299. Electronic monitoring requirement.

'Electronic monitoring requirement', in relation to a youth rehabilitation order¹, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period specified in the order² or determined by the responsible officer in accordance with the order³.

Where:

1000 (1) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order⁴; but

1001 (2) there is a person (other than the offender) without whose co-operation it will not be practicable to secure that the monitoring takes place⁵,

the requirement may not be included in the order without that person's consent⁶.

A youth rehabilitation order which imposes an electronic monitoring requirement must include provision for making a person responsible for the monitoring⁷ and the person who is made responsible for the monitoring must be of a description specified in an order made by the Secretary of State⁸.

A court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court:

1002 (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available in the local justice area proposed to be specified in the order and for each a curfew requirement, an exclusion requirement and an attendance centre requirement which the court proposes to include in the order, in the area in which the relevant place⁹ is situated¹⁰; and

1003 (b) is satisfied that the necessary provision can be made under the arrangements currently available¹¹.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the youth rehabilitation order, the responsible officer must, before the beginning of that period, notify the offender, the person responsible for the monitoring and any person falling within the Criminal Justice and Immigration Act 2008 Sch 1 para 26(3)(b), of the time when the period is to begin: Sch 1 para 26(2). As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 26(1).

4 Criminal Justice and Immigration Act 2008 Sch 1 para 26(3)(a).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 26(3)(b).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 26(3).

7 Criminal Justice and Immigration Act 2008 Sch 1 para 26(4).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 26(5). See the Youth Rehabilitation Order (Electronic Monitoring Requirement) Order 2009, SI 2009/2950.

9 The relevant places are: (1) in relation to a curfew requirement, the place which the court proposes to specify in the order for the purposes of that requirement; (2) in relation to an exclusion requirement, the place (within the meaning of the Criminal Justice and Immigration Act 2008 Sch 1 para 15 (see PARA 292)) which the court proposes to specify in the order; (3) in relation to an attendance centre requirement, the attendance centre which the court proposes to specify in the order: Sch 1 para 26(7) Table. As to a curfew requirement see PARA 275. As to an attendance centre requirement see PARA 300. As to an exclusion requirement see PARA 292. As to the meaning of 'attendance centre' see the Criminal Justice Act 2003 s 221(1); and PARA 283 note 3 (definition applied by the Criminal Justice and Immigration Act 2008 s 7).

10 Criminal Justice and Immigration Act 2008 Sch 1 para 26(6)(a).

11 Criminal Justice and Immigration Act 2008 Sch 1 para 26(6)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/300. Attendance centre requirement.

300. Attendance centre requirement.

'Attendance centre requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must attend at an attendance centre specified in the order for such number of hours² as may be so specified³. A court may not include an attendance centre requirement in a youth rehabilitation order unless it:

- 1004 (1) has been notified by the Secretary of State that an attendance centre is available for persons of the offender's description and provision can be made at the centre for the offender⁴; and
- 1005 (2) is satisfied that the attendance centre proposed to be specified is reasonably accessible to the offender, having regard to the means of access available to the offender and any other circumstances⁵.

A requirement to attend at an attendance centre for any period on any occasion operates as a requirement to attend at the centre at the beginning of the period and, during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere⁶.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 The aggregate number of hours for which the offender may be required to attend at an attendance centre:

- 300 (1) if the offender is aged 16 or over at the time of conviction, must be not less than 12 and not more than 36 (Criminal Justice and Immigration Act 2008 Sch 1 para 12(2)(a));
- 301 (2) if the offender is aged 14 or over but under 16 at the time of conviction, must be not less than 12 and not more than 24 (Sch 1 para 12(2)(b));
- 302 (3) if the offender is aged under 14 at the time of conviction, must not be more than 12 (Sch 1 para 12(2)(c)).

The first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer: Sch 1 para 12(4). The subsequent hours are to be fixed by the officer in charge of the centre in accordance with arrangements made by the responsible officer and having regard to the offender's circumstances: Sch 1 para 12(5). An offender may not be required under Sch 1 para 12 to attend at an attendance centre on more than one occasion on any day or for more than three hours on any occasion: Sch 1 para 12(6). As to the power of the Secretary of State to make rules for regulating the attendance of persons subject to attendance centre requirements imposed by youth rehabilitation orders see s 222(1)(e); and PARA 285. As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

As to the meaning of 'attendance centre' see the Criminal Justice Act 2003 s 221(1); and PARA 283 note 3 (definition applied by the Criminal Justice and Immigration Act 2008 s 7).

3 Criminal Justice and Immigration Act 2008 Sch 1 para 12(1).

4 Criminal Justice and Immigration Act 2008 Sch 1 para 12(3)(a).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 12(3)(b).

6 Criminal Justice and Immigration Act 2008 Sch 1 para 12(7).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/301. Local authority residence requirement.

301. Local authority residence requirement.

'Local authority residence requirement', in relation to a youth rehabilitation order¹, means a requirement that, during the period specified in the order², the offender must reside in accommodation provided by or on behalf of a local authority specified in the order for the purposes of the requirement³. A youth rehabilitation order which imposes a local authority residence requirement may also stipulate that the offender is not to reside with a person specified in the order⁴.

A youth rehabilitation order which imposes a local authority residence requirement must specify, as the local authority which is to receive the offender, the local authority in whose area the offender resides or is to reside⁵.

A court may not include a local authority residence requirement in a youth rehabilitation order made in respect of an offence unless it is satisfied that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living and that the imposition of that requirement will assist in the offender's rehabilitation⁶.

A court may not include a local authority residence requirement in a youth rehabilitation order unless it has consulted a parent or guardian⁷ of the offender (unless it is impracticable to consult such a person) and the local authority⁸ which is to receive the offender⁹.

A court may not include a local authority residence requirement in a youth rehabilitation order in respect of an offender unless the offender was legally represented at the relevant time¹⁰ in court¹¹ or either of the following conditions is satisfied:

1006 (1) that the offender was granted a right a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service for the purposes of the proceedings but the right was withdrawn because of the offender's conduct¹²; or

1007 (2) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings¹³ and has had the opportunity to do so, but nevertheless refused or failed to apply¹⁴.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

2 Any period specified in a youth rehabilitation order as a period for which the offender must reside in accommodation provided by or on behalf of a local authority must not be longer than six months and not include any period after the offender has reached the age of 18: Criminal Justice and Immigration Act 2008 Sch 1 para 17(6). The Secretary of State may by order amend Sch 1 para 17(6) by substituting, for any period for the time being specified in that provision, such other period as may be specified in the order: Sch 1 para 27(2), (3)(c). At the date at which this volume states the law no such order had been made. As to the meaning of 'local authority' see PARA 202 note 3.

3 Criminal Justice and Immigration Act 2008 Sch 1 para 17(1). 'Accommodation provided by or on behalf of a local authority' has the same meaning as it has for the purposes of the Children Act 1989 by virtue of s 105 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 863); Criminal Justice and Immigration Act 2008 s 7(1).

4 Criminal Justice and Immigration Act 2008 Sch 1 para 17(2).

5 Criminal Justice and Immigration Act 2008 Sch 1 para 17(5).

- 6 Criminal Justice and Immigration Act 2008 Sch 1 para 17(3).
- 7 As to the parent or guardian of the offender see PARA 202 note 3.
- 8 As to the meaning of 'local authority' see PARA 202 note 3.
- 9 Criminal Justice and Immigration Act 2008 Sch 1 para 17(4).
- 10 For this purpose 'relevant time' means the time when the court is considering whether to impose that requirement: Criminal Justice and Immigration Act 2008 Sch 1 para 19(3).
- 11 Criminal Justice and Immigration Act 2008 Sch 1 para 19(1)(a).
- 12 Criminal Justice and Immigration Act 2008 Sch 1 para 19(1)(b), (2)(a).
- 13 For this purpose 'proceedings' means the whole proceedings or the part of the proceedings relating to the imposition of the local authority residence requirement: Criminal Justice and Immigration Act 2008 Sch 1 para 19(3).
- 14 Criminal Justice and Immigration Act 2008 Sch 1 para 19(1)(b), (2)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/302. Fostering requirement.

302. Fostering requirement.

'Fostering requirement', in relation to a youth rehabilitation order¹, means a requirement that, for a period specified in the order², the offender must reside with a local authority³ foster parent⁴. If at any time during the period so specified, the responsible officer⁵ notifies the offender that no suitable local authority foster parent is available and that the responsible officer has applied or proposes to apply for the revocation or amendment of the order⁶, the fostering requirement is, until the determination of the application, to be taken to require the offender to reside in accommodation provided by or on behalf of a local authority⁷.

A court may not include a fostering requirement in a youth rehabilitation order unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent⁸.

A court may not include a fostering requirement in a youth rehabilitation order in respect of an offender unless the offender was legally represented at the relevant time⁹ in court¹⁰ or either of the following conditions are satisfied:

- 1008 (1) that the offender was granted a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service for the purposes of the proceedings but the right was withdrawn because of the offender's conduct¹¹; or
- 1009 (2) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings¹² and has had the opportunity to do so, but nevertheless refused or failed to apply¹³.

1 As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq. A fostering requirement may be made only if the offence is punishable with imprisonment and would otherwise justify a custodial sentence: see the Criminal Justice and Immigration Act 2008 s 1(4); and PARA 204.

2 A period specified in a youth rehabilitation order as a period for which the offender must reside with a local authority foster parent must:

303 (1) end no later than the end of the period of 12 months beginning with the date on which the requirement first has effect (but subject to the Criminal Justice and Immigration Act 2008 Sch 2 paras 6(9), 8(9) and 16(2)) (Sch 1 para 18(2)(a)); and

304 (2) not include any period after the offender has reached the age of 18 (Sch 1 para 18(2)(b)).

The Secretary of State may by order amend Sch 1 para 18(2) by substituting, for any period for the time being specified in that provision, such other period as may be specified in the order: Sch 1 para 27(2), (3)(d). Such an order may also make consequential amendments to Sch 2 paras 6(2), 8(9), 16(2) (see PARAS 214, 218, 302): Sch 1 para 27(4).

Where a youth rehabilitation order imposes a fostering requirement (the 'original requirement'), and under Sch 2 para 6(2)(b) (see PARA 214) or Sch 2 para 8(2)(b) (see PARA 215) the court proposes to substitute a new fostering requirement (the 'substitute requirement') for the original requirement, Sch 1 para 18(2) applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date: Sch 2 paras 6(9), 8(9). The Secretary of State may by order amend Sch 2 paras 6(9), 8(9) by substituting for the period of 18 months specified therein the provision or any other period which may be so specified by virtue of a previous order such other period as may be specified in the order: Sch 2 para 25.

3 A youth rehabilitation order which imposes a fostering requirement must specify the local authority which is to place the offender with a local authority foster parent under the Children Act 1989 s 23(2)(a): Criminal Justice and Immigration Act 2008 Sch 1 para 18(3). The authority so specified must be the local authority in whose area the offender resides or is to reside: Sch 1 para 18(4). As from a day to be appointed Sch 1 para 18(3) is amended by the Children and Young Persons Act 2008 s 44(3), (4), (5)(a) and the reference to the Children Act 1989 s 18(3) is replaced with a reference to the Children Act 1989 s 22C. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'local authority' see PARA 202 note 3.

4 Criminal Justice and Immigration Act 2008 Sch 1 para 18(1). The provisions of Sch 1 para 18 also apply where a youth rehabilitation order imposes a fostering requirement and the court intends to substitute a new fostering requirement: see Sch 2 para 16; and PARA 218. Schedule 1 para 18 does not affect the power of a local authority to place with a local authority foster parent an offender in respect of whom a local authority residence requirement is imposed: Sch 1 para 18(6). As to the meaning of 'local authority foster parent' see the Children Act 1989; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 900 (definition applied by the Criminal Justice and Immigration Act 2008 Sch 1 para 18(8)).

5 As to the meaning of 'responsible officer' see PARA 212 note 1; and as to the duties of the responsible officer in respect of a youth rehabilitation order see PARA 286.

6 He apply for an order under the Criminal Justice and Immigration Act 2008 Pt 3 or Pt 4.

7 Criminal Justice and Immigration Act 2008 Sch 1 para 18(5). As to the meaning of 'local authority' see PARA 202 note 3. 'Accommodation provided by or on behalf of a local authority' has the same meaning as it has for the purposes of the Children Act 1989 by virtue of s 105 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 863): Criminal Justice and Immigration Act 2008 s 7(1).

8 Criminal Justice and Immigration Act 2008 Sch 1 para 18(7).

9 As to the meaning of 'relevant time' see PARA 301 note 10.

10 Criminal Justice and Immigration Act 2008 Sch 1 para 19(1)(a).

11 Criminal Justice and Immigration Act 2008 Sch 1 para 19(1)(b), (2)(a).

12 As to the meaning of 'proceedings' see PARA 301 note 13.

13 Criminal Justice and Immigration Act 2008 Sch 1 para 19(1)(b), (2)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/8. COMMUNITY REQUIREMENTS/(2) REQUIREMENTS FOR YOUTH REHABILITATION ORDERS/303. Education requirement.

303. Education requirement.

'Education requirement', in relation to a youth rehabilitation order¹, means a requirement that the offender must comply, during a period or periods² specified in the order, with approved education arrangements³.

A court may not include an education requirement in a youth rehabilitation order unless it has consulted the local education authority proposed to be specified in the order with regard to the proposal to include the requirement⁴ and it is satisfied:

- 1010 (1) that, in the view of that local education authority, arrangements exist for the offender to receive efficient full-time education suitable to the offender's age, ability, aptitude and special educational needs (if any)⁵; and
- 1011 (2) that, having regard to the circumstances of the case, the inclusion of the education requirement is necessary for securing the good conduct of the offender or for preventing the commission of further offences⁶.

¹ As to youth rehabilitation orders, which may be made only in respect of offences committed on or after 30 November 2009, see PARAS 163, 202 et seq.

² Any period specified in a youth rehabilitation order as a period during which an offender must comply with approved education arrangements must not include any period after the offender has ceased to be of compulsory school age: Criminal Justice and Immigration Act 2008 Sch 1 para 25(5).

³ Criminal Justice and Immigration Act 2008 Sch 1 para 25(1). For this purpose, 'approved education arrangements' means arrangements for the offender's education made for the time being by the offender's parent or guardian and approved by the local education authority specified in the order: Sch 1 para 25(2). The local education authority so specified must be the local education authority for the area in which the offender resides or is to reside: Sch 1 para 25(3). As to the meanings of 'local education authority' and 'parent' see the Education Act 1996; and **EDUCATION** vol 15(1) (2006 Reissue) PARAS 20, 510 (definition applied by the Criminal Justice and Immigration Act 2008 Sch 1 para 25(6)).

⁴ Criminal Justice and Immigration Act 2008 Sch 1 para 25(4)(a).

⁵ Criminal Justice and Immigration Act 2008 Sch 1 para 25(4)(b)(i).

⁶ Criminal Justice and Immigration Act 2008 Sch 1 para 25(4)(b)(ii).

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9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE

(1) PREVENTIVE ORDERS

(i) Anti-social Behaviour Orders

304. Anti-social behaviour orders on conviction.

Where a person (the 'offender') is convicted of an offence¹ and the court² considers:

- 1012 (1) that the offender has acted, at any time since 1 April 1999³, in an anti-social manner⁴; and
- 1013 (2) that an anti-social behaviour order⁵ is necessary to protect persons in any place in England and Wales from further anti-social acts by him⁶,

it may⁷ make an order which prohibits the offender from doing anything described in the order⁸.

Such an order may not be made except:

- 1014 (a) in addition to a sentence imposed in respect of the relevant offence⁹; or
- 1015 (b) in addition to an order discharging the offender conditionally¹⁰.

An anti-social behaviour order has effect for a period (not less than two years) specified in the order or until further order¹¹. It takes effect on the day on which it is made, but the court may provide in any such order that such requirements of the order as it may specify are, during any period when the offender is detained in legal custody, to be suspended until his release from that custody¹².

An appeal lies to the Crown Court against the making by a magistrates' court of an anti-social behaviour order¹³.

1 Ie an offence committed after or on 2 December 2002 (ie the date on which the Crime and Disorder Act 1998 s 1C (added by the Police Reform Act 2002 s 64) was brought into force: see the Police Reform Act 2002 (Commencement No 3) Order 2002, SI 2002/2750): Crime and Disorder Act 1998 s 1C(10) (as so added)

2 For these purposes 'court', in relation to an offender, means the court by or before which he is convicted of the relevant offence; or, if he is committed to the Crown Court to be dealt with for that offence, the Crown Court: Crime and Disorder Act 1998 s 1C(10) (as added: see note 1).

3 Ie the date of the commencement of the Crime and Disorder Act 1998 s 1 (see PARA 496): see ss 1(12), 1C(10) (as added: see note 1); and the Crime and Disorder Act 1998 (Commencement No 3 and Appointed Day) Order 1998, SI 1998/3263.

Although the offender must have acted after 1 April 1999, a judge is not precluded from considering the totality of the offender's behaviour, both before and after that date, for the purpose of determining the necessity for an anti-social behaviour order: *R v McGrath (Jamie)* [2005] EWCA Crim 353, [2005] 2 Cr App Rep (S) 525, [2005] All ER (D) 81 (May).

4 Crime and Disorder Act 1998 s 1C(1), (2)(a) (as added: see note 1). 'Acting in an anti-social manner' is acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the person so acting: s 1C(2)(a) (as so added).

Proceedings under s 1C are civil in nature, so that hearsay evidence is admissible; but a court must be satisfied to the criminal standard that the defendant has acted in the anti-social manner alleged: *R v W* [2006] EWCA Crim 686 at [37], [2006] 3 All ER 562 at [37], [2006] 2 Cr App Rep (S) 724 at [37]. See also *R (on the application of W) v Acton Youth Court* [2005] EWHC 954 (Admin), 170 JP 31, [2005] All ER (D) 284 (May). Cf also *Chief Constable of Lancashire v Potter* [2003] EWHC 2272 (Admin), [2003] 42 LS Gaz R 31, [2003] All ER (D) 199 (Oct); *R (on the application of Gosport Borough Council) v Fareham Magistrates' Court* [2006] EWHC 3047 (Admin), [2007] 1 WLR 634, 171 JP 102 (decided under the Crime and Disorder Act 1998 s 1(1) (anti-social behaviour orders made otherwise than on conviction)); and PARA 496 note 5.

The Youth Justice and Criminal Evidence Act 1999 Pt 2 Ch 1 (ss 16-33) (special measures directions in the case of vulnerable and intimidated witnesses: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1417-1432) apply with modifications to any proceedings in a magistrates' court on an application for an anti-social behaviour order (Crime and Disorder Act 1998 s 1I(1)(a) (s 1I added by the Serious Organised Crime and Police Act 2005 s 143)), any proceedings in a magistrates' court or the Crown Court so far as relating to the issue whether to make an anti-social behaviour order under the Crime and Disorder Act 1998 s 1C (s 1I(1)(b) (as so added)), any proceedings in a magistrates' court so far as relating to the issue whether to make an interim anti-social behaviour order under s 1D (see PARAS 306-307) (s 1I(1)(c) (as so added)). As to the modifications see s 1I(2), (3) (as so added; s 1I(3) prospectively amended by the Coroners and Justice Act 2009 Sch 23 Pt 3)). Any rules of court made under or for the purposes of the Youth Justice and Criminal Evidence Act 1999 Pt 2 Ch 1

also apply in relation to such proceedings to such extent as may be provided by rules of court, and subject to such modifications as may be so provided: Crime and Disorder Act 1998 s 11(4) (as so added). The Youth Justice and Criminal Evidence Act 1999 s 47 (restrictions on reporting special measures directions etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1302) applies, with any necessary modifications, in relation to a direction under s 19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1419) as applied by the Crime and Disorder Act 1998 s 11, or a direction discharging or varying such a direction; and the Youth Justice and Criminal Evidence Act 1999 ss 49, 51 (offences: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1302) apply accordingly: Crime and Disorder Act 1998 s 11(5) (as so added).

5 le an order under the Crime and Disorder Act 1998 s 1C. Anti-social behaviour orders may also be made otherwise than on conviction on application to a magistrates' court: see PARA 496 et seq.

6 Crime and Disorder Act 1998 s 1C(2)(b) (as added: see note 1). The test of 'necessity' in s 1C(2)(b) requires the exercise of judgment or evaluation; it does not require proof beyond reasonable doubt that the order is necessary: *R v W* [2006] EWCA Crim 686 at [37], [2006] 3 All ER 562 at [37], [2006] 2 Cr App Rep (S) 724 at [37].

7 le if the prosecutor asks the court to do so (Crime and Disorder Act 1998 s 1C(3)(a) (as added (see note 1); s 1C(3)(a), (b) substituted, s 1C(3A), (3B) added, by the Anti-social Behaviour Act 2003 s 86(1), (2)) or if the court thinks it appropriate to do so (Crime and Disorder Act 1998 s 1C(3)(b) (as so added and substituted)). For the purpose of deciding whether to make an order under s 1C, the court may consider evidence led by the prosecution and the defence: s 1C(3A) (as so added). It is immaterial whether evidence led in pursuance of s 1C(3A) would have been admissible in the proceedings in which the offender was convicted: s 1C(3B) (as so added).

The court must have regard to all relevant considerations; and there should be clarity as to the basis for, and scope of, any order made under s 1C: *R (on the application of C) v Sunderland Youth Court* [2003] EWHC 2385 (Admin), [2004] 1 Cr App Rep (S) 443, 167 JP 596, DC. If the court proposes to make an order of its own motion it must indicate the basis on which it provisionally considers an order to be appropriate, and the material on which it proposes to rely, so that the offender can make meaningful submissions against the making of an order or against its provisionally proposed form: *R (on the application of C) v Sunderland Youth Court*. The terms of an order must be clearly and correctly explained to the offender in open court: *R (on the application of C) v Sunderland Youth Court*.

8 Crime and Disorder Act 1998 s 1C(2) (as added: see note 1). As to restrictions on making orders see PARA 305; as to proceedings for anti-social behaviour orders see CPR Pt 65. As to proceedings for breach see PARA 311. An order made by the Crown Court under the Crime and Disorder Act 1998 s 1C must be in the form set out in *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533, Annex D, CA; *Amendment to the Consolidated Criminal Practice Direction (Forms for Use in Criminal Proceedings)* [2005] 2 All ER 916, [2005] 1 WLR 1479, Annex D, CA; *Amendment No 19 to the Consolidated Criminal Practice Direction (forms of notice of intention to apply for certain behaviour orders if the defendant is convicted and proposed application)* [2008] All ER (D) 292 (Mar). The whole procedure should take place in the presence of the offender; the terms of any order must be precise and capable of being understood by him, and must be explained to him; the findings of fact must be recorded; the exact terms of the order must be pronounced in open court; and the written order must accurately reflect the order as pronounced: *R v P (Shane Tony)* [2004] EWCA Crim 287, [2004] 2 Cr App Rep (S) 343, [2004] Crim LR 490. See also *R v Boness, R v Bebbington* [2005] EWCA Crim 2395, [2006] Crim LR 160, 169 JP 621. Not all the terms of the order have to be run for its full term: *R v W* [2006] EWCA Crim 686 at [27], [29], [37], [2006] 3 All ER 562 at [27], [29], [37], [2006] 2 Cr App Rep (S) 724 at [27], [29], [37]. See also the cases cited in PARA 496 note 11.

9 Crime and Disorder Act 1998 s 1C(4)(a) (as added: see note 1). The court should decide the appropriate sentence and then move on to consider whether an anti-social behaviour order should be made (*R v Boness, R v Bebbington* [2005] EWCA Crim 2395, [2006] Crim LR 160, 169 JP 621: see also *R v H, R v Stevens and Lovegrove* [2006] EWCA Crim 255, [2006] Crim LR 569; *R v W* [2006] EWCA Crim 686 at [33], [2006] 3 All ER 562 at [33], [2006] 2 Cr App Rep (S) 724 at [33]): the making of an anti-social behaviour order is not a normal part of the sentencing process, especially when the case has not involved intimidation, harm or distress (*R v Kirby* [2005] EWCA Crim 1228, [2006] 1 Cr App Rep (S) 151, [2005] Crim LR 732). An anti-social behaviour order may be made where a restraining order (see PARA 349) already exists but has been breached several times and proved insufficient: *R v Edwards* [2008] EWCA Crim 1172, [2008] All ER (D) 63 (Jun).

The court may adjourn any proceedings in relation to an order under the Crime and Disorder Act 1998 s 1C even after sentencing the offender: s 1C(4A) (as so added; and s 1C(4A)-(4C) added by the Serious Organised Crime and Police Act 2005 s 139(1), (4)(a)). If the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest: Crime and Disorder Act 1998 s 1C(4B) (as so added). The court may not, however, issue a warrant for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings: s 1C(4C) (as so added).

10 Crime and Disorder Act 1998 s 1C(4)(b) (as added: see note 1).

11 Crime and Disorder Act 1998 ss 1(7), 1C(9) (as added: see note 1).

12 Crime and Disorder Act 1998 s 1C(5) (as added: see note 1). As to the meaning of 'release' see PARA 579 note 14. Where a custodial sentence of more than a few months is passed, and the offender is liable to be released on licence and therefore subject to recall, the circumstances will be limited in which there will be a demonstrable necessity to make a suspended anti-social behaviour order to take effect on release, although there will be cases where a geographical limitation could properly supplement licence conditions: *R v P (Shane Tony)* [2004] EWCA Crim 287, [2004] 2 Cr App Rep (S) 343, [2004] Crim LR 490; *R v W* [2006] EWCA Crim 686 at [35], [2006] 3 All ER 562 at [35], [2006] 2 Cr App Rep (S) 724 at [35]. See also *R v Thomas (Elijah)* [2008] EWCA Crim 2151, 172 JP 545 (no necessity to make anti-social behaviour order).

13 Crime and Disorder Act 1998 s 4(1). On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal (s 4(2)(a)) and may also make such incidental or consequential orders as appear to it to be just (s 4(2)(b)).

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305. Restrictions on making orders.

Although an anti-social behaviour order may prohibit conduct which is also a distinct offence, the order must be justified by reference to the statutory requirements¹, and caution should be exercised in the making of an anti-social behaviour order if the behaviour in question would, in any event, be a criminal offence². An anti-social behaviour order made following conviction for a relevant offence must be proportionate, ie commensurate with the risk to be guarded against³. The test for making an order is one of necessity to protect persons from further anti-social acts by the offender⁴, and the use of such an order to punish a defendant is unlawful because the purpose of an anti-social behaviour order is not to punish⁵.

The prohibitions in the order must be sufficiently clear and specific to enable the offender to comply without difficulty⁶, and the terms of the order must be enforceable in the sense that the conditions should allow a breach to be readily identified and capable of being proved⁷. The power to make an anti-social behaviour order should not be exercised where the objective is to achieve a higher sentence than the maximum for the offence of which the defendant has been convicted⁸.

1 Ie the requirements of the Crime and Disorder Act 1998 s 1C(2)(a), (b) (see PARA 304). A prohibition on the wearing of hooded clothing may be a legitimate condition: *R (on the application of B) v Greenwich Magistrates' Court* [2008] EWHC 2882 (Admin), 173 JP 52.

2 *R v Morrison* [2005] EWCA Crim 2237, [2006] 1 Cr App Rep (S) 488, [2005] NLJR 1549; *R v W* [2006] EWCA Crim 686 at [31], [2006] 3 All ER 562 at [31], [2006] 2 Cr App Rep (S) 724 at [31].

3 *R v Boness, R v Bebbington* [2005] EWCA Crim 2395, 169 JP 621, [2006] Crim LR 160, 169 JP 621. See also *R v McGrath (Jamie)* [2005] EWCA Crim 353, [2005] 2 Cr App Rep (S) 525; *R v W* [2006] EWCA Crim 686 at [29], [2006] 3 All ER 562 at [29], [2006] 2 Cr App Rep (S) 724 at [29]; *N v DPP* [2007] EWHC 883 (Admin), 171 JP 393.

4 *R v Boness, R v Bebbington* [2005] EWCA Crim 2395, [2006] Crim LR 160, 169 JP 621; *R v W* [2006] EWCA Crim 686 at [29], [2006] 3 All ER 562 at [29], [2006] 2 Cr App Rep (S) 724 at [29].

5 *R v Boness, R v Bebbington* [2005] EWCA Crim 2395, [2006] Crim LR 160, 169 JP 621.

6 *R (on the application of W) v DPP* [2005] EWCA Civ 1333, 169 JP 435 (order prohibiting offender from committing any criminal offence held invalid).

7 *R v Boness, R v Bebbington* [2005] EWCA Crim 2395, [2006] Crim LR 160, 169 JP 621. Conditions should not impose generic prohibitions, but should identify and prohibit the particular type of anti-social behaviour that necessitates the order: *R v W* [2006] EWCA Crim 686 at [22], [2006] 3 All ER 562 at [22], [2006] 2 Cr App Rep (S) 724 at [22].

8 *R v Kirby* [2005] EWCA Crim 1228, [2006] 1 Cr App Rep (S) 151, [2005] Crim LR 732; followed in *R v Williams* [2005] EWCA Crim 1796, [2006] RTR 41, [2005] Crim LR 872; *R v Lawson* [2005] EWCA Crim 1840, [2006] 1 Cr App Rep (S) 323, [2005] Crim LR 871; *R v Boness, R v Bebbington* [2005] EWCA Crim 2395, [2006] Crim LR 160, 169 JP 621. Contrast *R v Hall* [2004] EWCA Crim 2671, [2005] 1 Cr App Rep (S) 671, [2005] Crim LR 152, which was expressly not followed in *R v Williams* (where the Court of Appeal stated that *R v Kirby* should be followed).

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306. Interim orders.

The following provisions apply where:

- 1016 (1) a request is made by the prosecution for an anti-social behaviour order¹; or
- 1017 (2) the court is minded to make such an order of its own motion².

If, before determining the request, or before deciding whether to make such an order of its own motion, the court considers that it is just to make an interim order³ pending the determination of that request or before making that decision, it may make such an order⁴.

An interim order is an order which prohibits the defendant from doing anything described in the order⁵. The prohibitions that may be imposed by an interim order are those necessary for the purpose of protecting persons⁶ from further anti-social acts by the defendant⁷, and such an order:

- 1018 (a) must be for a fixed period⁸;
- 1019 (b) may be varied, renewed or discharged⁹; and
- 1020 (c) must, if it has not previously ceased to have effect, cease to have effect on the determination of the request mentioned in head (1) above, or on the court's making a decision as to whether or not to make an anti-social behaviour order¹⁰ of its own motion¹¹.

An appeal lies to the Crown Court against the making by a magistrates' court of an interim order¹².

1 Crime and Disorder Act 1998 s 1D(1)(c) (s 1D added by the Police Reform Act 2002 s 65(1); Crime and Disorder Act 1998 s 1D(1), (2) substituted by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (6)). For these purposes, an 'anti-social behaviour order' is an order under the Crime and Disorder Act 1998 s 1C (see PARA 304).

2 Crime and Disorder Act 1998 s 1D(1)(d) (as added and substituted: see note 1).

3 It is an order under the Crime and Disorder Act 1998 s 1D (see the text and notes 4-12). In deciding whether it is just to make an interim order, the court must balance the need to protect the public against the impact on the defendant, taking into account the seriousness of the behaviour, the urgency of controlling it, and whether the order must be made without notice to be effective. Where the defendant is under 18 the court should have regard to the principle that his best interests are a primary consideration: *R (on the application of Kenny) v Leeds Magistrates' Court*, *R (on the application of M) v Secretary of State for Constitutional Affairs and Lord Chancellor* [2003] EWHC 2963 (Admin), [2004] 1 All ER 1333. See also *R (on the application of A) v Leeds Magistrates' Court* [2004] EWHC 564 (Admin), (2004) Times, 31 March.

4 Crime and Disorder Act 1998 s 1D(2) (as added and substituted: see note 1). As to special measures for witnesses see s 1I; and PARA 304 note 4. As to proceedings for the breach of interim orders see PARA 311. An application for an interim anti-social behaviour order may be in the form set out in the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, Sch 5: r 4(5) (amended by SI 2003/1236). Such an application may, with the leave of the justices' clerk, be made without notice being given to the defendant, but the justices' clerk may only grant such leave if satisfied that it is necessary for the application to be made without notice being so given: Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5(1), (2). See *R (on the application of Manchester City Council) v Manchester Magistrates' Court* [2005] EWHC 253 (Admin), (2005) Times, 8 March, [2005] All ER (D) 103 (Feb). If an application made without notice is granted, the interim order and the application for an anti-social behaviour order (together with a summons

giving a date for the defendant to attend court) must be served on the defendant in person and as soon as practicable after making the interim order: Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5(3). An interim order made without notice may not take effect until served on the defendant, and ceases to have effect if not served within seven days of being made: r 5(4), (5). Where the court refuses to make an interim order without notice being given to the defendant it may direct that the application be made on notice: r 5(7). As to service see r 7 (amended by SI 2005/617). As to delegation of functions under the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, see r 8 (amended by SI 2005/67).

The 'without notice' procedure under the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5 is not in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (the presumption of innocence and right to a fair trial: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq): *R (on the application of M) v Secretary of State for Constitutional Affairs and Lord Chancellor* [2003] EWHC 2963 (Admin), [2004] 1 All ER 1333.

5 Crime and Disorder Act 1998 s 1D(3) (as added: see note 1). The omission of a condition in an interim order from the final order is not, of itself, a matter to which a court should properly have regard when sentencing for breach of a condition in an interim order: *Parker v DPP* [2005] EWHC 1485 (Admin), (2005) Times, 20 June, [2005] All ER (D) 98 (Jun).

6 The relevant persons or persons elsewhere in England and Wales: Crime and Disorder Act 1998 ss 1(6), 1D(6)(a) (s 1(6) substituted by the Police Reform Act 2002 s 61(1), (7); Crime and Disorder Act 1998 s 1D(6) as added (see note 1); further added by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (9)). For the purposes of the making of anti-social behaviour orders 'relevant persons' means:

- 305 (1) in relation to a relevant authority falling within the Crime and Disorder Act 1998 s 1(1A)(a) (see PARA 307), persons within the local government area of that council (s 1(1B)(a) (s 1(1B) added by the Police Reform Act 2002 s 61));
- 306 (2) in relation to a relevant authority falling within the Crime and Disorder Act 1998 s 1(1A)(aa) (see PARA 307), persons within the county of the county council (s 1(1B)(aa) (s 1(1B) as so added; s 1(1B)(aa) added by the Anti-social Behaviour Act 2003 s 85));
- 307 (3) in relation to a relevant authority falling within the Crime and Disorder Act 1998 s 1(1A)(b) (see PARA 307), persons within the police area (s 1(1B)(b) (as so added));
- 308 (4) in relation to a relevant authority falling within s 1(1A)(c) (see PARA 307), persons who are within or likely to be within a place specified in the Railways and Transport Safety Act 2003 s 31(1)(a)-(f) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 283) in a local government area, or persons who are within or likely to be within such a place (Crime and Disorder Act 1998 s 1(1B)(c) (as so added; amended by SI 2004/1573)); and
- 309 (5) in relation to a relevant authority falling within the Crime and Disorder Act 1998 s 1(1A)(d) or (e) (see PARA 307), persons who are residing in or who are otherwise on or likely to be on premises provided or managed by that authority, or persons who are in the vicinity of or likely to be in the vicinity of such premises (s 1(1B)(d) (as so added; amended by the Anti-social Behaviour Act 2003 s 85)).

7 Crime and Disorder Act 1998 ss 1(6) (as substituted: see note 6).

8 Crime and Disorder Act 1998 s 1D(4)(a) (as added: see note 1). An interim order ceases to have effect if the application for the anti-social behaviour order is withdrawn: Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5(6).

9 Crime and Disorder Act 1998 s 1D(4)(b) (as added: see note 1). If an interim order is made without notice being given to the defendant, and the defendant subsequently applies to the court for the order to be discharged or varied, his application may not be dismissed without the opportunity for him to make oral representations to the court: Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5(8). As to an application for variation or discharge see also r 6 (amended by SI 2005/617).

10 See note 3.

11 Crime and Disorder Act 1998 s 1D(4)(c) (as added (see note 1); and amended by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (7)).

12 Crime and Disorder Act 1998 s 4(1) (amended by the Police Reform Act 2002 s 65(2)). On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal

(Crime and Disorder Act 1998 s 4(2)(a)) and may also make such incidental or consequential orders as appear to it to be just (s 4(2)(b)).

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307. Variation and discharge of anti-social behaviour orders and interim orders.

An offender subject to an anti-social behaviour order made on conviction¹ or an interim order² may apply to the court which made it³ for it to be varied or discharged⁴. The Director of Public Prosecutions⁵ may also apply to the court which made such an order for it to be varied or discharged⁶. A relevant authority⁷ may apply to the court which made such an order for it to be varied or discharged if it appears to it that:

- 1021 (1) in the case of variation, the protection of relevant persons from anti-social acts by the person subject to the order would be more appropriately effected by a variation of the order⁸;
- 1022 (2) in the case of discharge, that it is no longer necessary to protect relevant persons from anti-social acts by him by means of such an order⁹.

No such order may be discharged on such an application before the end of the period of two years beginning with the day on which the order takes effect, unless:

- 1023 (a) in the case of an application by an offender, the Director of Public Prosecutions consents¹⁰; or
- 1024 (b) in the case of an application by the Director of Public Prosecutions or a relevant authority, the offender consents¹¹.

1 le an order under the Crime and Disorder Act 1998 s 1C (see PARA 304). Anti-social behaviour orders may also be made otherwise than on conviction on application to a magistrates' court: see PARA 496 et seq.

2 See PARA 306.

3 In the case of an order made by a magistrates' court, the references in the Crime and Disorder Act 1998 s 1CA(1) and in s 1CA(3), (4) (see the text and notes 5-9) to the court by which the order was made include a reference to any magistrates' court acting in the same local justice area as that court: s 1CA(6) (s 1CA added by the Serious Organised Crime and Police Act 2005 s 140(1), (4)).

4 Crime and Disorder Act 1998 ss 1CA(1), 1D(6)(b) (s 1CA(1) as added (see note 3); s 1D added by the Police Reform Act 2002 s 65(1); Crime and Disorder Act 1998 s 1D(6) added by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (9)). If an offender applies for variation or discharge he must also send written notice of his application to the Director of Public Prosecutions: s 1CA(2) (as so added).

5 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1066.

6 Crime and Disorder Act 1998 s 1CA(3) (as added: see note 3).

7 'Relevant authority' means:

310 (1) the council for a local government area (Crime and Disorder Act 1998 s 1(1A)(a) (s 1(1A) added by the Police Reform Act 2002 s 61; Crime and Disorder Act 1998 s 1(1A) amended by the Serious Organised Crime and Police Act 2005 s 142(2); the Criminal Justice and Immigration Act 2008 ss 123(2), 124(4); and SI 2005/3496));

311 (2) in relation to England, a county council (Crime and Disorder Act 1998 s 1(1A)(aa) (s 1(1A) as so added and amended; s 1(1A)(aa) added by the Anti-Social Behaviour Act 2003 s 85));

- 312 (3) the chief officer of police of any police force maintained for a police area (Crime and Disorder Act 1998 s 1(1A)(b) (as so added));
- 313 (4) the chief constable of the British Transport Police Force (s 1(1A)(c) (as so added));
- 314 (5) any person registered under the Housing Act 1996 s 1 (see **HOUSING** vol 22 (2006 Reissue) PARA 67) as a social landlord who provides or manages any houses or hostel in a local government area (Crime and Disorder Act 1998 s 1(1A)(d) (as so added)); or
- 315 (6) a housing action trust established by order in pursuance of the Housing Act 1988 s 62 (see **HOUSING** vol 22 (2006 Reissue) PARA 322) (Crime and Disorder Act 1998 s 1(1A)(e) (s 1(1A) as so added; s 1(1A)(e) added by the Anti-social Behaviour Act 2003 s 85)).

For these purposes, 'local government area' means, in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly; and, in relation to Wales, a county or county borough and 'British Transport Police Force' means the British Transport Police Force established under the Railways and Transport Safety Act 2003 Pt 3 (ss 18-77) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 281) (Crime and Disorder Act 1998 s 1(12) (second definition added by the Police Reform Act 2002 s 61; and amended by the Railways and Transport Safety Act 2003 Sch 5 para 4(2)(j))). A chief constable may delegate or devolve to any officer or officers judged suitable by him the respective functions set out in the Crime and Disorder Act 1998 s 1(1): *R (on the application of the Chief Constable of the West Midlands Police) v Birmingham Justices* [2002] EWHC 1087 (Admin), [2003] Crim LR 39, [2002] 28 LS Gaz R 32.

The Secretary of State may by order provide that the chief officer of a body of constables maintained otherwise than by a police authority is, in such cases and circumstances as may be prescribed by the order, to be a relevant authority for the purposes of the Crime and Disorder Act 1998 s 1 (see PARA 496): s 1A(1) (s 1A added by the Police Reform Act 2002 s 62(1); Crime and Disorder Act 1998 s 1A(1) amended, s 1A(2) added, by the Serious Organised Crime and Police Act 2005 s 139(1), (3)). The Secretary of State may also by order provide that a person or body of any other description specified in the order is, in such cases and circumstances as may be prescribed by the order, to be a relevant authority for the purposes of such of the Crime and Disorder Act 1998 s 1, s 1B (see PARA 497), s 1CA and s 1E (see PARAS 307, 496) as are specified in the order; and he may prescribe the description of persons who are to be 'relevant persons' in relation to that person or body: s 1A(2) (as so added). The Environment Agency and Transport for London have been specified as relevant authorities for the purposes of the Crime and Disorder Act 1998 s 1, s 1B, s 1CA and s 1E: see the Crime and Disorder Act 1998 (Relevant Authorities and Relevant Persons) Order 2006, SI 2006/2137.

For the Secretary of State's power by order to provide that a relevant authority which is a local authority may contract out any of its functions under the Crime and Disorder Act 1998 ss 1-1E see s 1F (added by the Serious Organised Crime and Police Act 2005 s 142(1)).

For guidelines for avoiding conflicts of interest where the relevant authority is a local authority and the defendant is a child for whom it has parental responsibility see *R (on the application of M) v Sheffield Magistrates' Court* [2004] EWHC 1830 (Admin), [2004] 3 FCR 281, [2005] 1 FLR 81.

8 Crime and Disorder Act 1998 s 1CA(4)(a) (as added: see note 3). If the Director of Public Prosecutions or a relevant authority applies for the variation or discharge of such an order, he or it must also send written notice of the application to the person subject to the order: s 1CA(5) (as so added).

9 Crime and Disorder Act 1998 s 1CA(4)(b) (as added: see note 3).

10 Crime and Disorder Act 1998 s 1CA(7)(a) (as added: see note 3).

11 Crime and Disorder Act 1998 s 1CA(7)(b) (as added: see note 3).

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308. Review of orders.

If:

- 1025 (1) an anti-social behaviour order¹ has been made in respect of a person under the age of 17²;
- 1026 (2) the person subject to the order will be under the age of 18 at the end of a review period³; and
- 1027 (3) the term of the order runs until the end of that period or beyond⁴,

then before the end of that period a review of the operation of the order must be carried out⁵.

Such a review must be carried out by the appropriate chief officer of police⁶ or⁷ a relevant authority⁸ and must include consideration of:

- 1028 (a) the extent to which the person subject to the order has complied with it⁹;
- 1029 (b) the adequacy of any support available to the person to help him comply with it¹⁰;
- 1030 (c) any matters relevant to the question whether an application should be made for the order to be varied or discharged¹¹.

1 These provisions apply to anti-social behaviour orders made on conviction (see PARA 304) or on an application to a magistrates' court (see PARA 496), as well as to orders made in county court proceedings (see PARA 497): Crime and Disorder Act 1008 s 1J(1) (ss 1J, 1K added by the Criminal Justice and Immigration Act 1998 s 123(1)).

2 Crime and Disorder Act 1008 s 1J(1) (as added: see note 1).

3 Crime and Disorder Act 1008 s 1J(2)(a) (as added: see note 1). The review periods are:

- 316 (1) the period of 12 months beginning with the day on which the order was made (s 1J(3)(a)(i) (as so added)) or, if during that period there is a supplemental order (or more than one), the date of the supplemental order (or the last of them) (s 1J(3)(a)(ii) (as so added));
- 317 (2) a period of 12 months beginning with the day after the end of the previous review period (s 1J(3)(b)(i) (as so added)), or, if during that period there is a supplemental order (or more than one), the date of the supplemental order (or the last of them) (s 1J(3)(b)(ii) (as so added)).

'Supplemental order' means a further order varying the order in question (s 1J(4)(a) (as so added)) or an individual support order made in relation to the order in question on an application under s 1AA(1A) (see PARA 310) (s 1J(4)(b) (as so added)).

4 Crime and Disorder Act 1008 s 1J(2)(b) (as added: see note 1).

5 Crime and Disorder Act 1008 s 1J(2) (as added: see note 1). Section 1J(2) does not apply in relation to any review period if the order is discharged before the end of that period: s 1J(5) (as added: see note 1).

6 Crime and Disorder Act 1008 s 1K(2)(a) (as added: see note 1). 'Appropriate chief officer of police' means the chief officer of police of the police force maintained for the police area in which the person subject to the order resides or appears to reside: s 1K(7) (as so added). The chief officer of police of a police force, in carrying out a review under s 1J, must act in co-operation with the appropriate local authority; and it is the duty of that local authority to co-operate in the carrying out of the review: s 1K(4) (as so added). 'Appropriate local authority' means the council for the local government area (within the meaning given in s 1(12): see PARA 307 note 7) in which the person subject to the order resides or appears to reside: s 1K(7) (as so added). A chief

officer of police or other relevant authority carrying out a review under s 1J may invite the participation in the review of a person or body not required by s 1K(3), (4) or (5) (see above; and note 8) to co-operate in the carrying out of the review: s 1K(6) (as so added).

Those carrying out or participating in a review under s 1J must have regard to any guidance issued by the Secretary of State when considering:

- 318 (1) how the review should be carried out (s 1J(7)(a) (as so added));
- 319 (2) what particular matters should be dealt with by the review (s 1J(7)(b) (as so added)); and
- 320 (3) what action (if any) it would be appropriate to take in consequence of the findings of the review (s 1J(7)(c) (as so added)).

7 In the case where a relevant authority is specified under the Crime and Disorder Act 1998 1C(9ZA) (s 1C added by the Police Reform Act 2002 s 64; Crime and Disorder Act 1998 1C(9ZA) added by the Criminal Justice and Immigration Act 1998 s 123(3)) (which provides that an order under the Crime and Disorder Act 1998 1C made in respect of a person under the age of 17, or an order varying such an order, may specify a relevant authority (other than the chief officer of police mentioned in s 1K(2)(a)) as being responsible for carrying out a review under s 1J of the operation of the order): s 1K(2)(b) (as added: see note 1). As to the meaning of 'relevant authority' see PARA 307 note 7.

8 Crime and Disorder Act 1008 s 1K(2)(b) (as added: see note 1). A local authority, in carrying out a review under s 1J, must act in co-operation with the appropriate chief officer of police; and it is the duty of that chief officer to co-operate in the carrying out of the review: s 1K(3) (as so added). A relevant authority other than a local authority or chief officer of police, in carrying out a review under s 1J, must act in co-operation with the appropriate local authority and the appropriate chief officer of police; and it is the duty of that local authority and that chief officer to co-operate in the carrying out of the review: s 1K(5) (as so added). See also ss 1J(7), 1K(6); and note 6.

- 9 Crime and Disorder Act 1008 s 1J(6)(a) (as added: see note 1).
- 10 Crime and Disorder Act 1008 s 1J(6)(b) (as added: see note 1).
- 11 Crime and Disorder Act 1008 s 1J(6)(c) (as added: see note 1).

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309. Individual support orders and individual support conditions.

An 'individual support order' is an order which requires the defendant to comply, for a period not exceeding six months, with such requirements as are specified in the order¹ and requires the defendant to comply with any directions given by the responsible officer² with a view to the implementation of such requirements³. Individual support orders may be made only in respect of a defendant aged under 18 at the time the anti-social behaviour order is made⁴.

The 'individual support conditions' are:

- 1031 (1) that an individual support order would be desirable in the interests of preventing any repetition of the kind of behaviour which led to the making of the anti-social behaviour order or⁵ an order varying that order⁶;
- 1032 (2) that the defendant is not already subject to an individual support order⁷; and
- 1033 (3) that the court has been notified by the Secretary of State that arrangements for implementing individual support orders are available in the area in which it appears to it that the defendant resides or will reside and the notice has not been withdrawn⁸.

1 Crime and Disorder Act 1998 ss 1AA(2)(a), 1C(9AA) (s 1AA added by the Criminal Justice Act 2003 s 322; Crime and Disorder Act 1998 s 1AA(2), (3), (5) amended by the Criminal Justice and Immigration Act 2008 s 124(1)-(3); Crime and Disorder Act 1998 s 1C(9AA)-(9AC) added by the Police Reform Act 2002 and by the Criminal Justice and Immigration Act 2008 s 124(7)). As to the circumstances in which an order may be made see the Crime and Disorder Act 1998 s 1AA(1B); and PARA 310. Individual support orders may be made in connection with an anti-social behaviour order made on conviction under s 1C (see PARA 304) or made otherwise than on conviction under s 1 (see PARA 496) or s 1B (see PARA 497), and these provisions apply to orders made under any of these provisions.

The requirements that may be so specified are those that the court considers desirable in the interests of preventing any repetition of the kind of behaviour mentioned in the Crime and Disorder Act 1998 s 1AA(3)(a) (see the text and notes 4-5): s 1AA(5) (as so added and amended).

Requirements included in an individual support order, or directions given under such an order by a responsible officer, may require the defendant to do all or any of:

- 321 (1) to participate in activities specified in the requirements or directions at a time or times so specified (s 1AA(6)(a) (as so added));
- 322 (2) to present himself to a person or persons so specified at a place or places and at a time or times so specified (s 1AA(6)(b) (as so added)); and
- 323 (3) to comply with any arrangements for his education so specified (s 1AA(6)(c) (as so added)).

Requirements included in, or directions given under, such an order may not, however, require the defendant to attend (whether at the same place or at different places) on more than two days in any week: s 1AA(7) (as so added). For these purposes 'week' means a period of seven days beginning with Sunday: s 1AA(7) (as so added). Requirements included in, and directions given under, an individual support order must, as far as practicable, be such as to avoid any conflict with the defendant's religious beliefs and any interference with the times, if any, at which he normally works or attends school or any other educational establishment: s 1AA(8) (as so added).

'Responsible officer', in relation to an individual support order, means one of the following who is specified in the order, namely: (1) a social worker of a local authority; (2) a person nominated by a person appointed as

chief education officer under the Education Act 1996 s 532 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 51); (3) a member of a youth offending team: Crime and Disorder Act 1998 s 1AA(10) (as so added; and amended by the Children Act 2004 Sch 5 Pt 4). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

2 As to such directions see note 1.

3 Crime and Disorder Act 1998 s 1AA(2)(b) (as added and amended: see note 1).

4 See the Crime and Disorder Act 1998 s 1AA(1); and PARA 310.

5 le in a case where the variation is made as a result of further anti-social behaviour by the defendant: Crime and Disorder Act 1998 s 1AA(3)(a) (as added and amended: see note 1).

6 Crime and Disorder Act 1998 s 1AA(3)(a) (as added and amended: see note 1).

7 Crime and Disorder Act 1998 s 1AA(3)(b) (as added and amended: see note 1).

8 Crime and Disorder Act 1998 s 1AA(3)(c) (as added and amended: see note 1).

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310. Making of individual support orders.

Where:

1034 (1) a court makes an anti-social behaviour order¹ in respect of a defendant who is a child or young person² when that order is made³; or

1035 (2) an anti-social behaviour order has previously been made in respect of such a defendant⁴ and an application⁵ is made to the court which made that order, by the chief officer of police, or other relevant authority, responsible⁶ for carrying out a review of the order, for an individual support order⁷,

the court must consider whether the individual support conditions⁸ are fulfilled and, if it is satisfied that those conditions are fulfilled⁹, the court must make an individual support order¹⁰.

If the person in respect of whom an individual support order is made fails without reasonable excuse to comply with any requirement included in the order, he is guilty of an offence¹¹. On an application made by the person subject to an individual support order, or by the responsible officer¹², the court which made the individual support order may vary or discharge it by a further order¹³.

An appeal lies to the Crown Court against the making by a magistrates' court of an individual support order¹⁴.

1 le an order made on conviction under the Crime and Disorder Act 1998 s 1C (see PARA 304) or made otherwise than on conviction under s 1 (see PARA 496) or s 1B (see PARA 497). Individual support orders may be made in connection with an anti-social behaviour order made under any of these provisions.

2 As to the meanings of 'child' and 'young person' see PARA 10 note 2.

3 Crime and Disorder Act 1998 ss 1AA(1), 1C(9AA) (ss 1AA, 1AB added by the Criminal Justice Act 2003 s 322; Crime and Disorder Act 1998 s 1AA(1), (1A), (1B) substituted, s 1AB(5A) added, by the Criminal Justice and Immigration Act 2008 s 124(1), (5); Crime and Disorder Act 1998 s 1C(9AA)-(9AC) added by the Police Reform Act 2002 and by the Criminal Justice and Immigration Act 2008 s 124(7)).

4 Crime and Disorder Act 1998 s 1AA(1A)(a) (s 1AA(1A) as added and substituted: see note 3).

5 At the time of the hearing of the application the defendant must still be a child or young person and the anti-social behaviour order must still be in force: Crime and Disorder Act 1998 ss 1AA(1A)(c) (as added and substituted: see note 3).

6 le under the Crime and Disorder Act 1998 s 1K(2)(a) or (b) (see PARA 308).

7 Crime and Disorder Act 1998 ss 1AA(1A)(b), 1C(9AB), (9AC) (as added and substituted: see note 3). As to the meaning of 'individual support order' see PARA 309.

8 As to the meaning of 'individual support conditions' see PARA 309.

9 If the court is not satisfied that the individual support conditions are fulfilled it must state in open court that it is not so satisfied and why it is not: Crime and Disorder Act 1998 s 1AA(4) (as added: see note 3). As to the meaning of 'open court' see PARA 23 note 3.

10 Crime and Disorder Act 1998 s 1AA(1B) (as added: see note 3). The period specified as the term of an individual support order made on an application under these provisions must not be longer than the remaining part of the term of the anti-social behaviour order as a result of which it is made: s 1AB(5A) (as so added).

Before making an individual support order, the court must obtain from a social worker of a local authority or a member of a youth offending team any information which it considers necessary in order to determine whether the individual support conditions are fulfilled or to determine what requirements should be imposed by an individual support order if made, and must consider that information: s 1AA(9) (as so added; amended by the Children Act 2004 Sch 5 Pt 4). The court must also explain to the defendant in ordinary language:

- 324 (1) the effect of the order and of the requirements proposed to be included in it (Crime and Disorder Act 1998 s 1AB(1)(a) (as so added));
- 325 (2) the consequences which may follow (ie under s 1AB(3) (see the text and note 11)) if he fails to comply with any of those requirements (s 1AB(1)(b) (as so added)); and
- 326 (3) that the court has power (ie under s 1AB(6) (see the text and note 12-13)) to review the order on the application either of the defendant or of the responsible officer (s 1AB(1)(c) (as so added)).

The power of the Secretary of State under the Criminal Justice Act 2003 s 174(4) (see PARA 23) includes power by order to prescribe cases in which the Crime and Disorder Act 1998 s 1AB(1) does not apply; and to prescribe cases in which the explanation referred to in s 1AB(1) may be made in the absence of the defendant, or may be provided in written form: s 1AB(2) (as so added).

If the anti-social behaviour order as a result of which an individual support order was made ceases to have effect, the individual support order (if it has not previously ceased to have effect) ceases to have effect when the anti-social behaviour order does: s 1AB(5) (as so added).

11 Crime and Disorder Act 1998 s 1AB(3) (as added: see note 3). As to requirements see PARA 309. A person guilty of this offence is liable on summary conviction to a fine not exceeding £1,000 if he is aged 14 or over at the date of his conviction, or £250 if he is then aged under 14: s 1AB(3) (as so added). No referral order under the Powers of Criminal Courts (Sentencing) Act 2000 s 16(2) or (3) (referral of young offenders to youth offender panels: see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 344) may be made in respect of an offence under the Crime and Disorder Act 1998 s 1AB(3): s 1AB(4) (as so added).

12 As to the meaning of 'responsible officer' see PARA 309 note 1.

13 Crime and Disorder Act 1998 ss 1AB(6), 1C(9AB) (as added: see note 3). If the anti-social behaviour order as a result of which an individual support order was made is varied, the court varying the anti-social behaviour order may by a further order vary or discharge the individual support order: s 1AB(7) (as so added). Any order of the Crown Court made on an appeal under s 4 (see the text and note 14) (other than one directing that an application be re-heard by a magistrates' court) is, for the purposes of s 1AB(6), to be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the Crown Court: s 4(3) (amended by the Criminal Justice Act 2003 s 323(1), (2)(b)).

14 Crime and Disorder Act 1998 s 4(1) (amended by the Criminal Justice Act 2003 s 323(1), (2)(a)). On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal (Crime and Disorder Act 1998 s 4(2)(a)) and may also make such incidental or consequential orders as appear to it to be just (s 4(2)(b)).

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311. Proceedings for breach of orders.

If without reasonable excuse¹ a person does anything which he is prohibited from doing by an anti-social behaviour order or an interim order², he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine or to both, or on summary conviction to imprisonment for a term not exceeding six months³ or to a fine not exceeding the statutory maximum or to both⁴.

1 Where a breach of an anti-social behaviour order is alleged, ignorance, forgetfulness or misunderstanding may be capable of constituting a reasonable excuse; accordingly, the issues of fact (and the value judgment as to reasonableness) are matters for the jury in the Crown Court: *R v Nicholson* [2006] EWCA Crim 1518, [2006] 1 WLR 2857, [2006] All ER (D) 218 (May).

2 These provisions apply to anti-social behaviour orders made on conviction (see PARA 304) or on an application to a magistrates' court (see PARA 496), as well as to interim orders (see PARAS 306, 498) and orders made in county court proceedings (see PARA 497): Crime and Disorder Act 1998 ss 1(10), 1C(9), 1D(5), (6)(a) (s 1(10) amended, ss 1C, 1D added, by the Police Reform Act 2002 ss 61(1), (8), 65; Crime and Disorder Act 1998 ss 1C(9), 1D(5) amended, s 1D(6) substituted, by the Serious Organised Crime and Police Act 2005 ss 139(1), (4)(b), (5), (6), (8), 141(1), (3)). In the context of anti-social behaviour orders, ignorance, forgetfulness or misunderstanding, whether arising from an error as to the terms of the order or lack of knowledge of where the defendant was at the material time, may be capable of constructing a defence of reasonable excuse: see *R v Nicholson* [2006] EWCA Crim 1518, [2006] 1 WLR 2857, [2006] All ER (D) 218 (May).

3 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed.

Where breaches of anti-social behaviour orders or interim orders do not involve harassment, alarm or distress, community penalties should be considered in order to help the offender learn to live within the terms of the order to which he was subject. Where there is no community penalty, custodial sentences which are necessary to maintain the authority of the court can be kept as short as possible: *R v Lamb* [2005] EWCA Crim 2487, [2006] Crim LR 256. Where a breach of an anti-social behaviour order or an interim order consists of the commission of an offence, the sentence passed should be calculated by reference to the five-year maximum for breach of the order and not by reference to the statutory maximum for the offence: *R v Braxton* [2004] EWCA Crim 1374, [2005] 1 Cr App Rep (S) 167; *R v Tripp* [2005] EWCA Crim 2253, [2005] NLJR 1630; *R v Lamb* (not following *R v Morrison* [2005] EWCA Crim 2237, [2006] 1 Cr App Rep (S) 488, [2005] NLJR 1549, CA, to the contrary). See also *R v H* [2006] EWCA Crim 255, [2006] 2 Cr App Rep (S) 453, sub nom *R v Stevens* [2006] All ER (D) 23 (Feb).

The Sentencing Guidelines Council has issued a definitive guideline on the breach of an anti-social behaviour order: see Sentencing Guidelines Council Guideline *Breach of an Anti-Social Behaviour Order* (2008); and PARA 642.

4 Crime and Disorder Act 1998 ss 1(10), 1C(9), 1D(5), (6)(a) (as amended, added and substituted: see note 2). As to the statutory maximum see PARA 140. Where a person is convicted of an offence under these provisions it is not open to the court by or before which he is so convicted to make an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 12(1)(b) (conditional discharge: see PARA 40) in respect of the offence: Crime and Disorder Act 1998 s 1(11) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 192).

The council for the local government area in which a person in respect of whom an anti-social behaviour order has been made resides or appears to reside may bring proceedings under the Crime and Disorder Act 1998 s 1(10) for breach of an order under s 1C(2): s 1C(9A) (s 1C(9A)-(9C) added by the Anti-social Behaviour Act 2003 s 86(3)).

The following may bring proceedings for breach of an anti-social behaviour order made otherwise than on conviction or an interim order (but not for breach of an anti-social behaviour order made on conviction):

- 327 (1) a council which is a relevant authority (see **PARA 307** note 7) (s 1(10A)(a) (s 1(10A), (10B) added by the Anti-social Behaviour Act 2003 s 85(1), (4)));
- 328 (2) the council for the local government area in which a person in respect of whom an anti-social behaviour order has been made resides or appears to reside (Crime and Disorder Act 1998 s 1(10A)(b) (as so added)); and
- 329 (3) Transport for London, where the order was made on an application by Transport for London (s 1(10A)(c) (as so added; further added by the Transport for London Act 2008 s 29(a))).

If proceedings for breach of an interim order are brought in a youth court, the Children and Young Persons Act 1933 s 47(2) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) **PARA 1267**) has effect as if the persons entitled to be present at a sitting for the purposes of those proceedings included one person authorised to be present by a relevant authority: Crime and Disorder Act 1998 s 1(10B) (as so added).

In relation to proceedings brought against a child or a young person for an offence under these provisions:

- 330 (a) the Children and Young Persons Act 1933 s 49 (restrictions on reports of proceedings in which children and young persons are concerned: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) **PARAS 1272-1274**) does not apply in respect of the child or young person against whom the proceedings are brought (Crime and Disorder Act 1998 s 1(10D)(a) (s 1(10D) added by the Serious Organised Crime and Police Act 2005 s 141(1), (2)(a)));
- 331 (b) the Youth Justice and Criminal Evidence Act 1999 s 45 (power to restrict reporting of criminal proceedings involving persons under 18: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) **PARA 1276**) does so apply (Crime and Disorder Act 1998 s 1(10D)(b) (as so added)).

If, in relation to any such proceedings, the court does exercise its power to give a direction under the Youth Justice and Criminal Evidence Act 1999 s 45, it must give its reasons for doing so: Crime and Disorder Act 1998 s 1(10E) (added by the Serious Organised Crime and Police Act 2005 s 141(1), (2)(a)). Pending the commencement of the Youth Justice and Criminal Evidence Act 1999 s 45 references in the Crime and Disorder Act 1998 s 1(10D), (10E) to the Youth Justice and Criminal Evidence Act 1999 s 45 are, subject to Sch 2 para 2, references to the Children and Young Persons Act 1933: see the Serious Organised Crime and Police Act 2005 s 141(4). In relation to the Crime and Disorder Act 1998 s 1(10D) see *R (on the application of K) v Knowsley Metropolitan Borough Council* [2004] EWHC 1933 (Admin), 168 JP 461, sub nom *Keating v Knowsley Metropolitan Borough Council* [2004] All ER (D) 383 (Jul).

In relation to proceedings in which an anti-social behaviour order under the Crime and Disorder Act 1998 s 1C(2) is made against a child or young person who is convicted of an offence, in so far as the proceedings relate to the making of the order:

- 332 (i) the Children and Young Persons Act 1933 s 49 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) **PARAS 1272-1274**) does not apply in respect of the child or young person against whom the order is made (Crime and Disorder Act 1998 s 1C(9B), (9C)(a) (as so added)); and
- 333 (ii) the Children and Young Persons Act 1933 s 39 (power to prohibit publication of certain matters: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) **PARA 1271**) does so apply (Crime and Disorder Act 1998 s 1C(9C)(b) (as so added)).

For these purposes 'child' and 'young person' have the same meanings as in the Children and Young Persons Act 1933 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) **PARA 3**): Crime and Disorder Act 1998 ss 1(12), 1C(10) (s 1(12) added by the Serious Organised Crime and Police Act 2005 s 141(1), (2)(b); Crime and Disorder Act 1998 s 1C(10) as so added; and amended by the Anti-social Behaviour Act 2005 s 86(4))).

In proceedings for an offence under these provisions a copy of the original order, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings: s 1(10C) (added by the Serious Organised Crime and Police Act 2005 s 139(1), (2)).

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(ii) Binding over Parents and Guardians

312. Binding over of parent or guardian.

Where a child or young person¹ is convicted of an offence the court by which he is sentenced for that offence may:

- 1036 (1) with the consent of the offender's parent or guardian, order the parent or guardian to enter into a recognisance to take proper care of him and exercise proper control over him²; and
- 1037 (2) if the parent or guardian refuses consent and the court considers the refusal unreasonable, order the parent or guardian to pay a fine not exceeding a stated amount³.

Where the offender is aged under 16 when sentenced it is the duty of that court:

- 1038 (a) to exercise these powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences⁴; and
- 1039 (b) if it does not exercise them, to state in open court that it is not so satisfied and why⁵.

1 As to the meanings of 'child' and 'young person' see PARA 5 note 3.

2 See the Powers of Criminal Courts (Sentencing) Act 2000 s 150(2)(a); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288. Where the court has passed a community sentence on the offender it may include in the recognisance a provision that the offender's parent or guardian ensure that the offender complies with the requirements of that sentence: see s 150(2); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288. As to community sentences generally see PARA 163 et seq.

3 See the Powers of Criminal Courts (Sentencing) Act 2000 s 150(2)(b); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288.

4 See the Powers of Criminal Courts (Sentencing) Act 2000 s 150(1)(a); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288.

5 See the Powers of Criminal Courts (Sentencing) Act 2000 s 150(1)(b); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288.

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(iii) Disqualification Orders

A. DRIVING DISQUALIFICATION

313. Disqualification for driving for any offence.

Where a person is convicted of an offence¹ the sentence for which is:

- 1040 (1) a sentence fixed by law²;
- 1041 (2) a life sentence for public protection³;
- 1042 (3) the required custodial sentence for possession of a firearm or using a person to mind a weapon⁴;
- 1043 (4) the specified minimum term for a third class A drug trafficking offence⁵; or
- 1044 (5) the specified minimum term for a third domestic burglary⁶.

the court by or before which he is convicted may, in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence⁷. Where a court convicts a person of any other offence, it may exercise this power either as an alternative or in addition to dealing with the offender in any other way⁸.

Specific provision is also made for driving disqualification following a conviction for a road traffic offence⁹.

¹ ie an offence committed after 31 December 1997 (ie the date on which the Crime (Sentences) Act 1997 s 39, from which these provisions derive, was brought into force by the Crime (Sentences) Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/2200). For these purposes the offence need not be connected in any way with the use of a motor vehicle: *R v Cliff* [2004] EWCA Crim 3139, [2005] Crim LR 250, CA.

² Powers of Criminal Courts (Sentencing) Act 2000 s 146(2) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 120; the Violent Crime Reduction Act 2006 Sch 1 para 6; and the Criminal Justice and Immigration Act 2008 Sch 26 paras 40, 47). As to sentences fixed by law see PARA 15.

³ Powers of Criminal Courts (Sentencing) Act 2000 s 146(2) (as amended: see note 2). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 4.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 s 146(2) (as amended: see note 2). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 146(2) (as amended: see note 2). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

⁶ Powers of Criminal Courts (Sentencing) Act 2000 s 146(2) (as amended: see note 2). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

⁷ Powers of Criminal Courts (Sentencing) Act 2000 s 146(2) (as amended: see note 2). A court may not make an order under s 146 unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn: s 146(3). A court which makes an order under s 146 disqualifying a person for holding or obtaining a driving licence must require him to produce:

334 (1) any such licence held by him together with its counterpart (s 146(4)(a));

- 335 (2) in the case where he holds a Northern Ireland licence (within the meaning of the Road Traffic Act 1988 Pt III (ss 87-109): see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 444 et seq), his Northern Ireland licence and its counterpart (if any) (Powers of Criminal Courts (Sentencing) Act 2000 s 146(4)(aa) (s 146(4)(aa), (5)(aa) added by the Crime (International Co-operation) Act 2003 Sch 5 paras 72, 73)); or
- 336 (3) in the case where he holds a Community licence (within the meaning of the Road Traffic Act 1988 Pt III), his Community licence and its counterpart (if any) (Powers of Criminal Courts (Sentencing) Act 2000 s 146(4)(b)).

For these purposes 'driving licence' means a licence to drive a motor vehicle granted under the Road Traffic Act 1988; and 'counterpart': (a) in relation to a driving licence, has the meaning given in relation to such a licence by s 108(1) (see **ROAD TRAFFIC**) (Powers of Criminal Courts (Sentencing) Act 2000 s 146(5)); (b) in relation to a Northern Ireland licence, has the meaning given by the Road Traffic Act 1988 s 109A (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 484) (Powers of Criminal Courts (Sentencing) Act 2000 s 146(5)(aa) (as so added)); and (c) in relation to a Community licence, has the meaning given by the Road Traffic Act 1988 s 99B (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 474) (Powers of Criminal Courts (Sentencing) Act 2000 s 146(5)(b)).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 146(1). See note 7. As from a day to be appointed where a person is convicted of an offence for which the court imposes a custodial sentence and orders the person to be disqualified under s 146 or s 147 (see PARA 314) for holding or obtaining a driving licence the order under s 146 or s 147 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period: s 147A(1), (2) (ss 147A, 147B prospectively added by the Coroners and Justice Act 2009 Sch 16 para 5). 'Driving licence' means a licence to drive a motor vehicle granted under the Road Traffic Act 1988 Pt 3 (ss 87-109C) (see **ROAD TRAFFIC**): Powers of Criminal Courts (Sentencing) Act 2000 s 147A(10) (as so prospectively added). The discretionary disqualification period is the period for which, in the absence of s 147A, the court would have disqualified the person under s 146 or s 147 (s 147A(3) (as so prospectively added)); the appropriate extension period is:

- 337 (1) where an order under s 82A(2) (determination of tariffs: see PARA 33) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order (s 147A(4)(a) (as so prospectively added));
- 338 (2) in the case of a detention and training order under s 100 (offenders under 18: detention and training orders: see PARA 89), a period equal to half the term of that order (s 147A(4)(b) (as so prospectively added));
- 339 (3) where an order under the Criminal Justice Act 2003 s 181 (prison sentences of less than 12 months: see PARAS 98-99) is made in relation to the custodial sentence, a period equal to the custodial period specified pursuant to s 181(3)(a) less any relevant discount (Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(c) (as so prospectively added));
- 340 (4) where an order under the Criminal Justice Act 2003 s 183 (intermittent custody orders: see PARAS 100-101) is made in relation to the custodial sentence, a period equal to the number of custodial days specified pursuant to s 183(1)(a) less any relevant discount (Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(d) (as so prospectively added));
- 341 (5) where the Criminal Justice Act 2003 s 227 (extended sentence for certain violent or sexual offences: persons 18 or over: see PARA 75) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to s 227(2C)(a) calculated after that term has been reduced by any relevant discount (Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(e) (as so prospectively added));
- 342 (6) where the Criminal Justice Act 2003 s 228 (extended sentence for certain violent or sexual offences: persons under 18: see PARA 84) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to s 228(2B)(a) calculated after that term has been reduced by any relevant discount (Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(f) (as so prospectively added));
- 343 (7) where an order under the Criminal Justice Act 2003 s 269(2) (determination of minimum term in relation to mandatory life sentence: early release: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order (Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(g) (as so prospectively added)); and
- 344 (8) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount (s 147A(4)(h) (as so prospectively added)).

The 'relevant discount' is the total number of days to count as time served by virtue of a direction under the Criminal Justice Act 2003 s 240 (crediting periods of remand in custody: see PARAS 36-37) or s 240A (crediting periods of remand on bail: see PARA 37): Powers of Criminal Courts (Sentencing) Act 2000 s 147A(6) (as so prospectively added). If a period determined under s 147A(4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days: 147A(5) (as so prospectively added).

Section 147A does not apply where the custodial sentence was a suspended sentence (within the meaning given by the Criminal Justice Act 2003 s 189: see PARA 110), where the court has made an order under s 269(4) (determination of minimum term in relation to mandatory life sentence: no early release: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90) in relation to the custodial sentence or where the court has made an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A(4) (determination of minimum term in relation to discretionary life sentence: no early release: see PARA 33) in relation to the custodial sentence: ss 147A(7), 147B(5) (as so prospectively added). Where an amending order (ie an order under the Criminal Justice Act 2003 s 267 (alteration by order of relevant proportion of sentence)) provides that the proportion of a prisoner's sentence referred to in s 244(3)(a) or s 247(2) (release of prisoners in certain circumstances: see **PRISONS**) is to be read as a reference to another proportion (the 'new proportion') the Secretary of State may by order: (a) if the amending order makes provision in respect of s 244(3)(a), provide that the proportion specified in the Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(h) (see above) is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion (s 147A(8), (9)(a) (as so prospectively added)); and (b) if the amending order makes provision in respect of the Criminal Justice Act 2003 s 247(2), provide that the proportion specified in the Powers of Criminal Courts (Sentencing) Act 2000 s 147A(4)(e), (f) (see above) is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion (s 147A(9)(b) (as so prospectively added)).

As from a day to be appointed where a person is convicted of an offence for which a court proposes to order the person to be disqualified under s 146 or s 147 for holding or obtaining a driving licence and the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence or at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired, then in determining the period for which the person is to be disqualified under s 146 or s 147, the court must have regard, if and to the extent that it is appropriate to do so to, the consideration of the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence: s 147B(1)-(3) (as so prospectively added). If the court proposes to order the person to be disqualified under s 146 or s 147 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for these purposes: s 147B(4) (as so prospectively added).

At the date at which this volume states the law no day had been appointed for the coming into force of ss 147A, 147B.

⁹ See the Road Traffic Offenders Act 1984 ss 34-43; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 1057-1079.

UPDATE

313 Disqualification for driving for any offence

NOTE 1--Citation for *R v Cliff* should read [2004] EWCA Crim 3139, [2005] Crim LR 250.

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314. Disqualification for driving where vehicle used for purposes of crime.

Where a person is convicted before the Crown Court of an offence punishable on indictment with imprisonment¹ for a term of two years or more² or, having been convicted by a magistrates' court of such an offence, is committed³ to the Crown Court for sentence⁴, and the Crown Court is satisfied that a motor vehicle was used (by the person convicted or by anyone else) for the purpose of committing, or facilitating the commission⁵ of, the offence in question, the court may order the person convicted to be disqualified⁶, for such period as the court thinks fit, for holding or obtaining a licence to drive a motor vehicle⁷.

Where a person is convicted by or before any court of common assault or of any other offence involving an assault (including an offence of aiding, abetting, counselling or procuring, or inciting the commission of, an offence)⁸, and the court is satisfied that the assault was committed by driving a motor vehicle, the court may order the person convicted to be disqualified, for such period as the court thinks fit, for holding or obtaining a driving licence⁹.

1 As to references to an offence punishable with imprisonment see PARA 6 note 5.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 147(1)(a).

3 I.e. under the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1105, 1123).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 147(1)(b).

5 Facilitating the commission of an offence is to be taken for these purposes to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates, or of avoiding apprehension or detection: Powers of Criminal Courts (Sentencing) Act 2000 s 147(6).

6 I.e. under the Road Traffic Act 1988 Pt III (ss 87-109) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 444 et seq).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 147(3). The powers under s 146 (see PARA 313) are wider than those under s 147 and effectively render s 147 redundant.

It is inappropriate to order disqualification under s 147(3) where the driving is merely incidental to the commission of the offence: *R v Wilmott* (1985) 149 JP 428. An offender may not be disqualified under the Powers of Criminal Courts (Sentencing) Act 2000 s 147(3) unless the vehicle was used to commit, or to facilitate the commission of, the offence of which he has been convicted: *R v Parrington* (1985) 7 Cr App Rep (S) 18, [1985] Crim LR 452, CA. The vehicle need not have been used in the immediate commission of the offence: *R v Patel (Rajesh)* (1994) 16 Cr App Rep (S) 756, [1995] Crim LR 440, CA (use of car by offender to pursue victim to traffic lights where offender attacked him; held to be used to facilitate commission of offence). See *R v Riley* (1983) 78 Cr App Rep 121, [1984] Crim LR 40, CA (the use of a motor vehicle in pursuance of an agreement to steal did not facilitate a conspiracy offence and there was no power under the applicable legislation (see now the Powers of Criminal Courts (Sentencing) Act 2000 s 147) to make an order of disqualification in respect of the offence of conspiracy); and cf *R v Devine* (1990) 12 Cr App Rep (S) 235, CA (offender pleaded guilty to conspiracy to rob; offender had used vehicle for purpose of avoiding arrest when police interrupted intended robbery; disqualification under what is now the Powers of Criminal Courts (Sentencing) Act 2000 s 147 upheld on basis that offender had 'facilitated commission of offence'). A judge who has it in mind to disqualify should raise the matter with counsel to enable them to make submissions on it: *R v Powell and Carvell* (1984) 6 Cr App Rep (S) 354, [1985] Crim LR 330, CA; *R v Lake* (1986) 8 Cr App Rep (S) 69, [1986] Crim LR 574, CA; *R v Money* (1988) 10 Cr App Rep (S) 237, CA.

A court which makes an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 147 disqualifying a person for holding or obtaining a driving licence must require him to produce:

- 345 (1) any such licence held by him (together, until a day to be appointed, with its counterpart) (s 147(5)(a) (s 147(5), (7) prospectively amended by the Road Safety Act 2006 s 10(12), Sch 3 paras 71, 73, Sch 7)); or
- 346 (2) in the case where he holds a Northern Ireland licence (within the meaning of the Road Traffic Act 1988 Pt III), his Northern Ireland licence and, until a day to be appointed, its counterpart (if any) (Powers of Criminal Courts (Sentencing) Act 2000 s 147(5)(aa) (added by the Crime (International Co-operation) Act 2003 Sch 5 paras 72, 74; as so prospectively amended)); or
- 347 (3) in the case where he holds a Community licence (within the meaning of the Road Traffic Act 1988 Pt III), his Community licence and, until a day to be appointed, its counterpart (if any) (Powers of Criminal Courts (Sentencing) Act 2000 s 147(5)(b) (as so prospectively amended)).

As to the meanings of 'driving licence' and 'counterpart' see s 146(5); and PARA 313 note 7 (definitions applied by s 147(7) (as so prospectively amended)).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 147(2).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 147(4).

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B. DIRECTORS' DISQUALIFICATION

315. Disqualification orders.

In certain circumstances the court may, and in some circumstances must, make against a person a disqualification order, that is to say an order that he may not be a director of a company, or act as receiver of a company's property, or in any way, whether directly or indirectly be concerned or take part in the promotion, formation or management of a company, unless (in each case) he has the leave of the court, and that he may not act as an insolvency practitioner¹.

1 See the Company Directors Disqualification Act 1986 s 1(1); and **COMPANIES** vol 15 (2009) PARA 1578.

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C. DISQUALIFICATION FOR WORKING WITH CHILDREN

316. Disqualification for working with children.

Partly until a day to be appointed¹ where:

- 1045 (1) an individual is convicted of a specified offence against a child² committed when he was aged 18 or over³, and a qualifying sentence⁴ is imposed by a superior court⁵ in respect of the conviction⁶; or
- 1046 (2) the individual is charged with an offence against a child committed when he was 18 or over⁷, and a relevant order⁸ is made by the superior court⁹ in respect of the act or omission charged against him as the offence¹⁰,

the court must, unless it is satisfied, having regard to all the circumstances, that it is unlikely that the individual will commit any further offences against a child¹¹, order the individual to be disqualified from working with children¹². Subsequent applications for such an order may be made¹³.

Partly until a day to be appointed¹⁴ where:

- 1047 (a) an individual is convicted of a specified offence against a child, committed when the individual was under the age of 18¹⁵, and a qualifying sentence is imposed by a superior court¹⁶ in respect of the conviction¹⁷; or
- 1048 (b) the individual is charged with an offence against a child committed when the individual was under the age of 18¹⁸, and a relevant order is made¹⁹ in respect of the act or omission charged against him as the offence²⁰,

the court must order the individual to be disqualified from working with children if it is satisfied, having regard to all the circumstances, that it is likely that the individual will commit a further offence against a child²¹. Subsequent applications for such an order may be made²².

Partly until a day to be appointed²³ where:

- 1049 (i) an individual is convicted of a specified offence against a child (whether or not it was committed when he was aged 18 or over)²⁴;
- 1050 (ii) the individual is sentenced by a superior court²⁵; and
- 1051 (iii) no qualifying sentence is imposed in respect of the conviction²⁶,

the court, if satisfied, having regard to all the circumstances, that it is likely that the individual will commit a further offence against a child, may order the individual to be disqualified from working with children²⁷.

¹ The provisions set out in this paragraph (ie the Criminal Justice and Courts Services Act 2000 ss 28, 29, 29A) are repealed, partly as from a day to be appointed, by the Safeguarding Vulnerable Groups Act 2006 Sch 10, and as from that day provision relating to disqualification for working with children is made by that Act (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 675 et seq). At the date at which this volume states

the law the repeal of the Criminal Justice and Courts Services Act 2000 ss 28, 29, 29A had been brought into force for the purposes of enabling a disqualification order to be made in relation to a person who is barred from regulated activity by virtue of the Safeguarding Vulnerable Groups Act 2006 s 3(2) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 685) (see the Safeguarding Vulnerable Groups Act 2006 (Commencement No 6, Transitional Provisions and Savings) Order 2009, SI 2009/2611, art 3(2)) but no date had been appointed for bringing those repeals into force for any remaining purposes.

2 As to when an individual commits an offence against a child for these purposes see the Criminal Justice and Courts Services Act 2000 Sch 4; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 667.

3 Criminal Justice and Courts Services Act 2000 s 28(2)(a) (prospectively repealed: see note 1). Provision is made for the assessment and management of the risks posed by persons in relation to whom this condition is satisfied: see the Criminal Justice Act 2003 ss 235, 236, 237(1), (5)(a).

4 I.e. a sentence of imprisonment or detention in a young offender institution (see PARA 85) for a term of 12 months or more, a sentence of detention during Her Majesty's pleasure (see PARA 81), a sentence of detention or a detention and training order for a period of 12 months or more under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 or s 100 (see PARAS 78, 89) (or corresponding armed forces legislation), a sentence of detention under the Criminal Justice Act 2003 s 226 or s 228 (see PARAS 82-84), a sentence of detention for a term of 12 months or more imposed by a court-martial or the Courts-Martial Appeal Court, a hospital order within the meaning of the Mental Health Act 1983 (see PARA 332 et seq) or a guardianship order (see PARA 332 et seq): see the Criminal Justice and Courts Services Act 2000 s 30(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663. For these purposes, the whole length of an extended sentence, and not just its custodial term, is the relevant period: *R v Wiles* [2004] EWCA Crim 836, [2004] 2 Cr App Rep (S) 467, [2004] Crim LR 596.

5 As to the superior courts for these purposes see the Criminal Justice and Courts Services Act 2000 s 30(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663.

6 Criminal Justice and Courts Services Act 2000 s 28(2)(b) (ss 28(2)(b), (3)(b), 29(2)(b), (3)(b), 29A(1)(b) amended by the Constitutional Reform Act 2005 Sch 11 para 35; prospectively repealed (see note 1)).

7 Criminal Justice and Courts Services Act 2000 s 28(3)(a) (prospectively repealed: see note 1).

8 As to a 'relevant order' see the Criminal Justice and Courts Services Act 2000 s 30(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663.

9 See note 5.

10 Criminal Justice and Courts Services Act 2000 s 28(3)(b) (as amended and prospectively repealed: see notes 1, 6).

11 Criminal Justice and Courts Services Act 2000 s 28(5) (prospectively repealed: see note 1). If the court does not make an order under s 28 it must state its reasons for not doing so and cause those reasons to be included in the record of proceedings: s 28(6) (as so prospectively repealed). The civil standard of proof (ie the balance of probabilities) is to be applied in order to determine whether a defendant is unlikely to re-offend: *R v MG* [2001] EWCA Crim 2308, [2002] 2 Cr App Rep (S) 1, [2002] 1 FLR 694. The offender bears this burden of proof: *R v Clayton* [2003] EWCA Crim 2161, [2004] 1 Cr App Rep (S) 201.

12 Criminal Justice and Courts Services Act 2000 s 28(1), (4) (prospectively repealed: see note 1). Such an order is a preventive measure and not a penalty for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 7 (prohibition of retrospective laws: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 148): *R v Field*, *R v Young* [2002] EWCA Crim 2913, [2003] 3 All ER 769, [2003] 2 Cr App Rep 38. Even if art 8 of the Convention (right to respect for private and family life: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq) is engaged by such an order (and there is nothing in the jurisprudence to suggest this), such interference is plainly justified under art 8(2): *R v G* [2005] EWCA Crim 1300, [2006] 1 Cr App Rep (S) 173, (2005) 149 Sol Jo LB 582.

An individual may appeal against an order under the Criminal Justice and Courts Services Act 2000 s 28 or s 29: see s 31(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 669.

13 See the Criminal Justice and Courts Services Act 2000 s 29B; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 666.

14 See note 1.

15 Criminal Justice and Courts Services Act 2000 s 29(2)(a) (prospectively repealed: see note 1).

16 See note 5.

17 Criminal Justice and Courts Services Act 2000 s 29(2)(b) (as amended and prospectively repealed: see notes 1, 6).

18 Criminal Justice and Courts Services Act 2000 s 29(3)(a) (prospectively repealed: see note 1).

19 See note 8.

20 Criminal Justice and Courts Services Act 2000 s 29(3)(b) (as amended and prospectively repealed: see notes 1, 6).

21 Criminal Justice and Courts Services Act 2000 s 29(1), (4) (prospectively repealed: see note 1). If the court makes an order under s 29, it must state its reasons and cause those reasons to be included in the record of the proceedings: s 29(5) (as so prospectively repealed). As to appeals see s 31(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 669.

22 See the Criminal Justice and Courts Services Act 2000 s 29B; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 666.

23 See note 1.

24 Criminal Justice and Courts Services Act 2000 s 29A(1) (s 29A added by the Criminal Justice Act 2003 Sch 30 paras 1, 2; prospectively repealed (see note 1)).

25 Criminal Justice and Courts Services Act 2000 s 29A(1)(b) (as added, amended and prospectively repealed: see notes 1, 6, 24).

26 Criminal Justice and Courts Services Act 2000 s 29A(1)(c) (as added and prospectively repealed: see notes 1, 24).

27 Criminal Justice and Courts Services Act 2000 s 29A(2) (as added and prospectively repealed: see notes 1, 24). If the court makes an order under s 29A it must state its reasons for doing so and cause those reasons to be included in the record of the proceedings: s 29A(3) (as so added and prospectively repealed). As to appeals see s 31(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 669.

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(iv) Exclusion Orders and Drinking Banning Orders

A. EXCLUSION ORDERS (LICENSED PREMISES)

317. Making of exclusion orders.

Until a day to be appointed¹, where a court by or before which a person is convicted of an offence committed on licensed premises² is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may make an order (an 'exclusion order') prohibiting him from entering those premises or any other specified premises³, without the express consent of the licensee⁴ of the premises or his servant or agent⁵.

An exclusion order may be made either:

- 1052 (1) in addition to any sentence which is imposed in respect of the offence of which the person is convicted⁶; or
- 1053 (2) where the offence was committed in England or Wales⁷, in addition to discharging him absolutely or conditionally⁸,

but not otherwise.

An exclusion order has effect⁹ for such period, not less than three months or more than two years, as is specified in the order¹⁰.

1 The Licensed Premises (Exclusion of Certain Persons) Act 1980 (see the text and notes 2-10; and PARA 318) is repealed, as from a day to be appointed, by the Violent Crime Reduction Act 2006 Sch 5: at the date at which this volume states the law no date had been appointed for these purposes. New provision for the making of drinking banning orders is made by Pt 1 Ch 1 (ss 1-14: see PARAS 319-325).

2 For these purposes 'licensed premises' means premises in respect of which there is in force a premises licence under the Licensing Act 2003 authorising the supply of alcohol (within the meaning of s 14: see **LICENSING AND GAMBLING** vol 67 (2008) PARA 53) for consumption on the premises: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(1) (amended by the Licensing Act 2003 Sch 6 para 74; prospectively repealed (see note 1)).

3 For these purposes 'specified premises', in relation to an exclusion order, means any licensed premises which the court may specify by name and address in the order: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(1) (prospectively repealed: see note 1).

4 For these purposes 'licensee', in relation to any licensed premises, means the holder of the licence granted in respect of those premises: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(1) (prospectively repealed: see note 1).

5 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(1) (prospectively repealed: see note 1). An exclusion order may be made by the court of its own motion: *R v Penn* [1996] 2 Cr App Rep (S) 214, [1996] Crim LR 360, CA. Persons who are neither a victim nor a party to the proceedings should not apply for such an order, but should make representations to the prosecuting authority: *R v Penn*. An exclusion order is designed for cases of offenders who make a nuisance of themselves in public houses: *R v Grady* (1990) 12 Cr App Rep (S) 152, [1990] Crim LR 608, CA. An order may specify all licensed premises in a particular area (any one of which the offender could readily visit) where the court is satisfied that the offender is prone to committing offences of violence on licensed premises generally: *R v Arrowsmith* [2003] 2 Cr App Rep (S) 301, [2003] Crim LR 412, CA (order applying to 165 public houses in metropolitan area justified). Where a court makes an exclusion order or

an order terminating or varying an exclusion order, the designated officer for a magistrates' court or the proper officer of the Crown Court, as the case may be, must send a copy of the order to the licensee of the premises to which the order relates: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(3), (4) (s 4(3) amended, s 4(4) added, by the Access to Justice Act 1999 Sch 13 para 94; and the Licensed Premises (Exclusion of Certain Persons) Act 1980 s 4(4) amended by the Courts Act 2003 Sch 8). Consequently, the order must identify individually the licensed premises to which it relates: *R v Arrowsmith*.

6 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(2)(a) (prospectively repealed: see note 1).

7 Ie notwithstanding the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 s 12 (see PARA 40) and s 14 (see PARA 41).

8 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(2)(b) (substituted by the Criminal Justice Act 1991 Sch 11 para 23; amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 11 para 60; prospectively repealed (see note 1)).

9 Ie unless it is terminated under the Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(2) (see PARA 318).

10 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1(3) (prospectively repealed: see note 1).

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318. Penalty for non-compliance.

Until a day to be appointed¹ a person who enters any premises in breach of an exclusion order² is guilty of an offence³. The court by which a person is convicted of such an offence must consider whether or not the exclusion order should continue in force, and may, if it thinks fit, by order terminate the exclusion order or vary it by deleting the name of any specified premises; but an exclusion order may not otherwise be affected by a person's conviction for such an offence⁴.

Provision is also made for the expulsion from licensed premises of a person who enters such premises in breach of an exclusion order⁵.

1 The Licensed Premises (Exclusion of Certain Persons) Act 1980 (see the text and notes 2-5; and PARA 317) is repealed, as from a day to be appointed, by the Violent Crime Reduction Act 2006 Sch 5: at the date at which this volume states the law no date had been appointed for these purposes. New provision for the making of drinking banning orders is made by Pt 1 Ch 1 (ss 1-14: see PARAS 319-325).

2 As to the meaning of 'exclusion order' see PARA 317.

3 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(1) (prospectively repealed: see note 1). A person who commits this offence is liable on summary conviction to imprisonment for a term not exceeding one month (or, as from a day to be appointed, 51 weeks: see s 2(1) (prospectively amended by the Criminal Justice Act 2003 Sch 26 para 27), noting that this increase does not apply to any offence committed before the appointed day (s 280(3)), or to a fine not exceeding level 3 on the standard scale or to both: Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(1) (amended by virtue of the Criminal Justice Act 1982 s 46; as so prospectively amended and prospectively repealed)). At the date at which this volume states the law no date had been appointed for the coming into force of the amendment made by the Criminal Justice Act 2003. As to the standard scale see PARA 142.

4 Licensed Premises (Exclusion of Certain Persons) Act 1980 s 2(2) (prospectively repealed: see note 1).

5 See the Licensed Premises (Exclusion of Certain Persons) Act 1980 s 3; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 141.

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B. DRINKING BANNING ORDERS

319. Drinking banning orders.

A drinking banning order is an order that prohibits the individual against whom it is made (the 'subject') from doing the things described in the order¹. Such an order may impose any prohibition on the subject which is necessary for the purpose of protecting other persons from criminal or disorderly conduct² by the subject while he is under the influence of alcohol³ and must include such prohibition as the court making the order considers necessary, for that purpose, on the subject's entering:

- 1054 (1) premises⁴ in respect of which there is a premises licence⁵ authorising the use of the premises for the sale of alcohol by retail⁶; and
- 1055 (2) premises in respect of which there is a club premises certificate⁷ authorising the use of the premises for the supply of alcohol to members or guests⁸.

However a drinking banning order may not impose a prohibition on the subject that prevents him:

- 1056 (a) from having access to a place where he resides⁹;
- 1057 (b) from attending at any place which he is required to attend for the purposes of any employment of his or of any contract of services to which he is a party¹⁰;
- 1058 (c) from attending at any place which he is expected to attend during the period for which the order has effect for the purposes of education or training or for the purpose of receiving medical treatment¹¹; or
- 1059 (d) from attending at any place which he is required to attend by any obligation imposed on him by or under an enactment or by the order of a court or tribunal¹².

1 Violent Crime Reduction Act 2006 s 1(1). A drinking banning order may be made on conviction in criminal proceedings (see s 6; and PARA 320): s 14(1). Drinking banning orders may also be made without a conviction on an application to a magistrates' court (see s 4; and PARA 527) or in county court proceedings (see s 3; and PARA 526): s 14(1).

2 References in the Violent Crime Reduction Act 2006 Pt 1 Ch 1 to protecting persons from criminal or disorderly conduct include references to protecting their property from unlawful loss or damage: s 14(2).

3 Violent Crime Reduction Act 2006 s 1(2).

4 As to the meaning of 'premises' see the Licensing Act 2003 s 193; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 27 (definition applied by the Violent Crime Reduction Act 2006 s 1(5)).

5 As to the meaning of 'premises licence' see the Licensing Act 2003 s 11; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 53 (definition applied by the Violent Crime Reduction Act 2006 s 1(5)).

6 Violent Crime Reduction Act 2006 s 1(3)(a). As to the meaning of 'sale of alcohol by retail' see the Licensing Act 2003 s 192; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 30 (definition applied by the Violent Crime Reduction Act 2006 s 1(5)).

7 As to the meaning of 'club premises certificate' see the Licensing Act 2003 s 60; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 85 (definition applied by the Violent Crime Reduction Act 2006 s 1(5)).

8 Violent Crime Reduction Act 2006 s 1(3)(b).

9 Violent Crime Reduction Act 2006 s 1(4)(a).

10 Violent Crime Reduction Act 2006 s 1(4)(b).

11 Violent Crime Reduction Act 2006 s 1(4)(c).

12 Violent Crime Reduction Act 2006 s 1(4)(d).

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320. Making of drinking banning orders on conviction.

As from a day to be appointed¹ where an individual aged 16 or over² (the 'offender') is convicted of an offence³ and was under the influence of alcohol at the time he committed the offence⁴, and the court⁵ has either imposed a sentence on the offender in respect of the offence⁶ or discharged the offender conditionally⁷, the court may also make a drinking banning order⁸ against the offender if it considers that:

- 1060 (1) the offender has after 31 August 2009⁹ engaged in criminal or disorderly conduct while under the influence of alcohol¹⁰; and
- 1061 (2) a drinking banning order is necessary to protect other persons from further conduct by him of that kind while he is under the influence of alcohol¹¹.

An appeal lies to the Crown Court against the making by a magistrates' court of a drinking banning order¹².

1 At the date at which this volume states the law the Violent Crime Reduction Act 2006 ss 6, 7 (and s 3(2) so far as applied by those provisions) (see the text and notes 2-11) had not been brought into force, and s 10 (see the text and note 12) had not been brought into force in so far as relating to a drinking banning order made on conviction in criminal proceedings under s 6.

2 As to the age of an offender for sentencing purposes see PARA 27.

3 Violent Crime Reduction Act 2006 s 6(1)(a) (not yet in force).

4 Violent Crime Reduction Act 2006 s 6(1)(b) (not yet in force).

5 The court by or before which the offender is convicted of the offence (Violent Crime Reduction Act 2006 s 7(11)(a) (not yet in force)) or, if he is committed to the Crown Court to be dealt with for the offence, the Crown Court (s 7(11)(b) (not yet in force)).

6 Violent Crime Reduction Act 2006 s 7(3)(a) (not yet in force). The court may adjourn any proceedings in relation to a drinking banning order under s 6 even after sentencing the offender (s 7(4) (not yet in force)), and if the offender does not appear for any adjourned proceedings the court may further adjourn the proceedings or may issue a warrant for his arrest (s 7(5) (not yet in force)) (although the court may not issue a warrant for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings (s 7(6) (not yet in force))). As to the meaning of 'drinking banning order' see PARA 319.

7 Violent Crime Reduction Act 2006 s 7(3)(b) (not yet in force).

8 For the purpose of deciding whether to make a drinking banning order under these provisions the court may consider evidence led by the prosecution and evidence led by the defence (Violent Crime Reduction Act 2006 s 7(1) (not yet in force)), and it is immaterial whether the evidence would have been admissible in the proceedings in which the offender was convicted (s 7(2) (not yet in force)). If the court does not make a drinking banning order even though it decides that the conditions for making the orders are satisfied in relation to the offender it must give its reasons for not doing so in open court: s 6(4) (not yet in force). If the court decides that the conditions are not satisfied in relation to the offender, it must also state that fact in open court and give its reasons: s 6(5) (not yet in force). As to the meaning of 'open court' see PARA 23 note 3.

Where the court is required under s 6 to consider whether the conditions for making a drinking banning order are satisfied it may make an interim order: see s 9; and PARA 322. As to the variation and discharge of drinking banning orders see s 8; and PARA 324; as to breach see s 11; and PARA 325.

In relation to proceedings in which a drinking banning order under s 6 is made against a young person, in so far as the proceedings relate to the making of the order:

- 348 (1) the Children and Young Persons Act 1933 s 49 (restrictions on reports of proceedings in which children and young persons are concerned: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1272-1274) does not apply in respect of the child or young person against whom the order is made (Violent Crime Reduction Act 2006 s 7(8), (9)(a) (not yet in force)); and
- 349 (2) the Children and Young Persons Act 1933 s 39 (power to prohibit publication of certain matters: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1271) does so apply (Violent Crime Reduction Act 2006 s 7(9)(b) (not yet in force)).

For these purposes 'young person' has the same meanings as in the Children and Young Persons Act 1933 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 3): Violent Crime Reduction Act 2006 s 14(1) (not yet in force).

As to the functions of the Director of Public Prosecutions in connection with applications for drinking banning orders under s 6 see the Prosecution of Offences Act 1985 s 3(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1080.

9 The date on which the Violent Crime Reduction Act 2006 s 3 was brought into force by the Violent Crime Reduction Act 2006 Commencement No 7) Order 2009, SI 2009/1840.

10 Violent Crime Reduction Act 2006 ss 3(2)(a), 6(2), (3) (s 3 not yet in force for these purposes, s 6 not yet in force).

11 Violent Crime Reduction Act 2006 s 3(2)(b) (not yet in force for these purposes).

12 Violent Crime Reduction Act 2006 s 10(1) (not yet in force for these purposes). On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal and may also make such incidental or consequential orders as appear to it to be just: s 10(2) (not yet in force for these purposes). See also s 10(3); and PARA 529.

UPDATE

320 Making of drinking banning orders on conviction

TEXT AND NOTE 1--Violent Crime Reduction Act 2006 ss 6, 7 in force in relation to specified local justice areas on 1 April 2010: SI 2010/469.

Violent Crime Reduction Act 2006 s 10 in force for remaining purposes in relation to specified local justice areas on 1 April 2010: SI 2010/469.

NOTE 8--Violent Crime Reduction Act 2006 s 14(1) in force in relation to specified local justice areas on 1 April 2010: SI 2010/469.

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321. Commencement and duration of drinking banning orders.

As from a day to be appointed¹ it is provided that a drinking banning order² takes effect on either the day on which it is made³ or, if on that day the offender⁴ is detained in legal custody, the day on which he is released from that custody⁵ and has effect for a period specified in the order (the 'specified period'), which must be not less than two months and not more than two years⁶.

An order may cease to have effect before the end of the specified period or the prohibition period pending the satisfactory conclusion of an approved course⁷.

1 At the date at which this volume states the law the Violent Crime Reduction Act 2006 s 7(7) (see the text and notes 2-5) had not been brought into force.

2 I.e. a drinking banning order under the Violent Crime Reduction Act 2006 s 6: see PARA 320. As to the meaning of 'drinking banning order' see PARA 319.

3 Violent Crime Reduction Act 2006 s 7(7)(a) (not yet in force).

4 As to the meaning of 'offender' see PARA 320.

5 Violent Crime Reduction Act 2006 s 7(7)(b) (not yet in force).

6 Violent Crime Reduction Act 2006 s 2(1). A drinking banning order may provide that different prohibitions contained in the order have effect for different periods; but, in each case, the period (the 'prohibition period') must be not less than two months and not more than two years: s 2(2).

7 See the Violent Crime Reduction Act 2006 s 2(3)-(9); and PARA 323.

UPDATE

321 Commencement and duration of drinking banning orders

TEXT AND NOTE 1--Violent Crime Reduction Act 2006 s 7(7) in force in relation to specified local justice areas on 1 April 2010: SI 2010/469.

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322. Interim orders.

As from a day to be appointed¹ where the court² is required³ to consider whether the conditions for making a drinking banning order⁴ are satisfied⁵ it may, before considering whether those conditions are satisfied, make an interim order if it considers that it is just to do so⁶. An interim order may contain any provision that may be contained in a drinking banning order⁷ but has effect, unless renewed, only for such fixed period of not more than four weeks as may be specified in the order⁸.

An interim order may be renewed (on one or more occasions) for a period of not more than four weeks from the end of the period when it would otherwise cease to have effect⁹ and must cease to have effect (if it has not previously done so) on the court's making its decision whether to make¹⁰ a drinking banning order¹¹.

1 At the date at which this volume states the law the Violent Crime Reduction Act 2006 s 9 (see the text and notes 2-11) had not been brought into force in so far as they relate to a drinking banning order made on conviction under s 6 (see PARA 320).

2 As to the meaning of 'court' see PARA 320 note 5.

3 Ie under the Violent Crime Reduction Act 2006 s 6: see PARA 320.

4 As to the meaning of 'drinking banning order' see PARA 319.

5 Violent Crime Reduction Act 2006 s 9(1)(b) (not yet in force for these purposes).

6 Violent Crime Reduction Act 2006 s 9(2)(b) (not yet in force for these purposes). As to the variation and discharge of interim orders see s 8; and PARA 324; as to breach see s 11; and PARA 325.

7 Violent Crime Reduction Act 2006 s 9(6)(a) (not yet in force for these purposes).

8 Violent Crime Reduction Act 2006 s 9(6)(b) (not yet in force for these purposes).

9 Violent Crime Reduction Act 2006 s 9(7)(a) (not yet in force for these purposes).

10 See note 3.

11 Violent Crime Reduction Act 2006 s 9(7)(b) (not yet in force for these purposes).

UPDATE

322 Interim orders

TEXT AND NOTE 1--Violent Crime Reduction Act 2006 s 9 in force for remaining purposes in relation to specified local justice areas on 1 April 2010: SI 2010/469.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(iv) Exclusion Orders and Drinking Banning Orders/B. DRINKING BANNING ORDERS/323. Completion of approved courses.

323. Completion of approved courses.

A drinking banning order¹ may include provision for the order² or a prohibition contained in it³ to cease to have effect before the end of the specified period⁴ or the prohibition period⁵ if the subject⁶ satisfactorily completes the approved course⁷ specified in the order⁸. Such provision must fix the time at which the order or the prohibition will cease to have effect if the subject satisfactorily completes the specified approved course⁹ as whichever is the later of the time specified in the order¹⁰ and the time when he does satisfactorily complete that course¹¹, and may be included in a drinking banning order only if the court¹² making the order is satisfied that a place on the specified approved course will be available for the subject¹³ and the subject has agreed to the inclusion of the provision in question in the order¹⁴.

1 le a drinking banning order under the Violent Crime Reduction Act 2006 s 6 (see PARA 320), s 3 (making of banning order by complaint to magistrates' court: see PARA 526) or s 4 (making of banning order in county court proceedings: see PARA 527). As to the meaning of 'drinking banning order' see PARA 319.

2 Violent Crime Reduction Act 2006 s 2(3)(a).

3 Violent Crime Reduction Act 2006 s 2(3)(b).

4 As to the meaning of 'specified period' see PARA 321.

5 As to the meaning of 'prohibition period' see PARA 321 note 6.

6 As to the meaning of 'subject' see PARA 319.

7 'Approved course' means a course approved by the Secretary of State for the purposes of the Violent Crime Reduction Act 2006 s 2: s 14(1). For this purpose 'course' means a course for the purposes of s 2 and 'course provider' means a person who provides a course for those purposes: Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 2.

An application for the approval of a course may only be made in response to an invitation to tender issued for that purpose by the Secretary of State and must be received by the Secretary of State before the end of 28 days beginning with the first day after the issuing of the invitation to tender (s 12(5)(a); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 3), and if an application is made to the Secretary of State for the approval of a course for the purposes of the Violent Crime Reduction Act 2006 s 2, he must decide whether to grant or refuse the application (s 12(1)). In reaching that decision the Secretary of State must have regard to the nature of the course and to whether the person providing it is an appropriate person both to provide it and efficiently and effectively to administer its provision (s 12(2)(a)) and may take into account any recommendations made by persons appointed by the Secretary of State to consider the application (s 12(2)(b)). A course may be approved subject to conditions specified by the Secretary of State: s 12(3). The approval of a course is for the period specified by the Secretary of State (which must not exceed seven years) (s 12(4)(a)) and may be withdrawn by him at any time (s 12(4)(b)). Withdrawal is effected by giving notice in writing to the course provider and such withdrawal has effect in accordance with the notice (s 12(5)(e); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 8(1)): the Secretary of State may withdraw an approval of a course with immediate effect or at different times for different purposes (reg 8(2)) and may suspend an approval before taking the decision whether or not to withdraw it (any such suspension being made by giving notice in writing to the course provider and having effect in accordance with the notice) (reg 8(3)).

A course provider may not require a person to pay more than £250 or less than £120 for a course: Violent Crime Reduction Act 2006 s 12(5)(c); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 4.

The Secretary of State may issue guidance about the conduct of approved courses and in exercising the powers and duties conferred or imposed on him by or under the Violent Crime Reduction Act 2006 s 12(1)-(5) must

have regard to the guidance under this provision that is for the time being in force: s 12(6). A course provider must permit the Secretary of State or any other person authorised by the Secretary of State to visit any premises which are used by a course provider in connection with the provision of a course at any reasonable time (s 12(5)(d); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 5) and must comply with any reasonable request by the Secretary of State to submit information within a reasonable period to the Secretary of State in connection with the course provided by that course provider (reg 6). A course provider is also required to record specified information in relation to persons in respect of whom the course provider's course is specified and to submit that information to the Secretary of State: see reg 7. The Secretary of State may also publish and make available on request information regarding courses and course providers: Violent Crime Reduction Act 2006 s 12(5)(f); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 9.

At the date at which this volume states the law the Violent Crime Reduction Act 2006 s 12 was in force only so far as relating to a drinking banning order made without a conviction on an application to a magistrates' court (see s 4; and PARA 527) or in county court proceedings (see s 3; and PARA 526): Violent Crime Reduction Act 2006 (Commencement No 7) Order 2009, SI 2009/1840.

8 Violent Crime Reduction Act 2006 s 2(3). Before making provision under s 2(3) the court must inform the subject in ordinary language (whether in writing or otherwise) about:

- 350 (1) the effect of including the provision in the order (s 2(7)(a));
- 351 (2) what, in general terms, attendance on the course will involve if he undertakes it (s 2(7)(b));
- 352 (3) any fees he will be required to pay for the course if he undertakes it (s 2(7)(c)); and
- 353 (4) when he will have to pay any such fees (s 2(7)(d)).

Where a court makes a drinking banning order which does not include provision under s 2(3) it must give its reasons for not including such provision in open court: s 2(8). As to the meaning of 'open court' see PARA 23 note 3.

9 The subject of a drinking banning order is to be regarded as having completed an approved course satisfactorily if, and only if, the person providing the course has given a certificate that the subject has done so: Violent Crime Reduction Act 2006 s 13(1)(a). A certificate of completion issued by a course provider under s 13 must be in the form specified in the Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, Sch 1: Violent Crime Reduction Act 2006 s 13(2); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 10. The time at which the subject is to be regarded as having satisfactorily completed the course is the time when that certificate is received by the proper officer of the court that made the order: Violent Crime Reduction Act 2006 s 13(1)(b). 'Proper officer' in relation to a magistrates' court, means the justices' clerk, and in relation to any other court, means the clerk of the court: s 14(1).

The person providing an approved course must give the subject of a drinking banning order in which that course is specified a certificate for these purposes unless that subject:

- 354 (1) has failed to make due payment of fees for the course (s 13(3)(a));
- 355 (2) has failed to attend the course in accordance with the reasonable instructions of the person providing the course (s 13(3)(b)); or
- 356 (3) has failed to comply with any other reasonable requirement of that person (s 13(3)(c)).

A court must have regard to guidance under s 12(6) (see note 7) in determining what for the purposes of s 13 constitutes reasonable instructions or reasonable requirements by a person providing an approved course: s 12(7).

Where a person providing an approved course decides not to give the subject of a drinking banning order a certificate of completion he must give the subject written notice of the decision, setting out the grounds of the decision: s 13(4). A notice of a decision under s 13(4) must be in the form specified in the Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, Sch 2 (Violent Crime Reduction Act 2006 s 13(8); Violent Crime Reduction Act 2006 (Drinking Banning Orders) (Approved Courses) Regulations 2009, SI 2009/1839, reg 11(1)), and must either be given to the subject of the drinking banning order in person or be sent by post to the last known address of that person, in which case it is deemed to have been given to that person on the second working day after the date on which it is sent (reg 11(2)).

The obligation of the person providing an approved course to give, in the case of the subject of a drinking banning order in which that course is specified, either a certificate for the purposes of the Violent Crime Reduction Act 2006 s 13 or a notice of non-completion under s 13(4) must be discharged before the end of 14 days beginning with the day on which any request to do so is made by that subject: s 13(5).

The subject of a drinking banning order who is given a notice under s 13(4) or who claims that a request for the purposes of s 13(5) has not been complied with may apply to the court which made the order under s 3 (or, if that court is not the Crown Court or a relevant local court, to either the court which made the order or a relevant local court), for a declaration that there has been a contravention of s 13(3): s 13(6); Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 6(1). Such an application must be made within 14 working days (which includes any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales) beginning on the day on which the notice under the Violent Crime Reduction Act 2006 s 13(4) is given in respect of the subject of the drinking banning order making the application or, where a notice under s 13(4) has not been given, 28 working days beginning on the day on which the subject of a drinking banning order makes a request under s 13(5): s 13(6); Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, rr 2, 6(2). If the court grants the application, the applicant is to be treated for the purposes of the Violent Crime Reduction Act 2006 s 2 as having satisfactorily completed the course at the time of the making of the declaration: s 13(7). 'Relevant local court', in relation to a drinking banning order, means a magistrates' court acting for the local justice area in which the subject normally resides: s 14(1).

At the date at which this volume states the law s 13 was in force only so far as relating to a drinking banning order made without a conviction on an application to a magistrates' court (see s 4; and PARA 527) or in county court proceedings (see s 3; and PARA 526): Violent Crime Reduction Act 2006 (Commencement No 7) Order 2009, SI 2009/1840.

10 Violent Crime Reduction Act 2006 s 2(4)(a). The time so specified must be a time after the expiry of at least half the specified period or (as the case may be) the prohibition period: s 2(5). The Secretary of State may by regulations amend s 2(5) so as to modify the earliest time (after the completion of the specified approved course) when by virtue thereof a drinking banning order or a prohibition contained in such an order may cease to have effect: s 2(9). At the date at which this volume states the law no such order had been made.

11 Violent Crime Reduction Act 2006 s 2(4)(b).

12 As to the meaning of 'court' see PARA 320 note 5.

13 Violent Crime Reduction Act 2006 s 2(6)(a).

14 Violent Crime Reduction Act 2006 s 2(6)(b).

UPDATE

323 Completion of approved courses

NOTES 7, 9--Violent Crime Reduction Act 2006 ss 12, 13 in force for remaining purposes in relation to specified local justice areas on 1 April 2010: SI 2010/469.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(iv) Exclusion Orders and Drinking Banning Orders/B. DRINKING BANNING ORDERS/324. Variation and discharge of drinking banning orders and interim orders made on conviction.

324. Variation and discharge of drinking banning orders and interim orders made on conviction.

As from a day to be appointed¹:

- 1062 (1) the subject²;
- 1063 (2) the Director of Public Prosecutions³; or
- 1064 (3) a relevant authority⁴,

may apply to the court⁵ which made a drinking banning order⁶ or an interim order⁷ for the order to be varied or discharged by a further order⁸. A drinking banning order may not be varied so as to extend the specified period⁹ to more than two years¹⁰, and no such order is to be discharged on an application by the subject¹¹ unless it is discharged from a time after the end of the period that is half the duration of the specified period¹² or the Director of Public Prosecutions has consented to its earlier discharge¹³.

1 At the date at which this volume states the law the Violent Crime Reduction Act 2006 s 8 (see the text and notes 2-13) had not been brought into force, and s 10 (see note 5) had not been brought into force in so far as relating to a drinking banning order made on conviction in criminal proceedings under s 6.

2 Violent Crime Reduction Act 2006 s 8(1)(a) (not yet in force). As to the meaning of 'subject' see PARA 319. If the subject makes an application under these provisions he must also send notice of his application to the Director of Public Prosecutions: s 8(2) (not yet in force).

3 Violent Crime Reduction Act 2006 s 8(1)(b) (not yet in force). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1066. If the Director of Public Prosecutions or a relevant authority (see note 4) makes an application under these provisions he or it must also send notice of the application to the subject: s 8(3) (not yet in force). As to the functions of the Director of Public Prosecutions in connection with applications under s 8 see the Prosecution of Offences Act 1985 s 3(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1080.

4 Violent Crime Reduction Act 2006 s 8(1)(c) (not yet in force). See note 3. 'Relevant authority' means the chief officer of police of a police force for a police area, the Chief Constable of the British Transport Police Force or a local authority: s 14(1) (not yet in force for these purposes). 'Local authority' means a county council in England, a district council in England, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly and a county council or a county borough council in Wales: s 14(1) (not yet in force for these purposes). As to the counties in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq. The Secretary of State may by order provide that a person of a description specified in the order is to be regarded as a relevant authority for such purposes of the provisions of Pt 1 Ch 1 (ss 1-14) as are specified in the order: s 14(3). At the date at which this volume states the law no such order had been made.

5 As to the meaning of 'court' see PARA 320 note 5. In the case of an order made by a magistrates' court, this reference to the court which made the order includes a reference to a relevant local court: s 8(4) (not yet in force). An order of the Crown Court made on an appeal under s 10 (other than one directing that an application be re-heard by a magistrates' court) is treated for the purposes of s 8 as an order of the magistrates' court from which the appeal was brought: s 10(3) (not yet in force for these purposes). As to the meaning of 'relevant local court' see PARA 323 note 9.

- 6 le a drinking banning order under the Violent Crime Reduction Act 2006 s 6: see PARA 320. As to the meaning of 'drinking banning order' see PARA 319.
- 7 le an order under the Violent Crime Reduction Act 2006 s 8: see PARA 322.
- 8 Violent Crime Reduction Act 2006 ss 8(1), 9(9) (not yet in force).
- 9 As to the meaning of 'specified period' see PARA 321.
- 10 Violent Crime Reduction Act 2006 s 8(5) (not yet in force). Section 8(5), (6) do not apply to an application for the variation of an interim order: s 9(9) (not yet in force).
- 11 le an application under the Violent Crime Reduction Act 2006 s 8(1)(a) (see the text and notes 1-2).
- 12 Violent Crime Reduction Act 2006 s 8(6)(a) (not yet in force). See note 10.
- 13 Violent Crime Reduction Act 2006 s 8(6)(b) (not yet in force). See note 10.

UPDATE

324 Variation and discharge of drinking banning orders and interim orders made on conviction

TEXT AND NOTE 1--Violent Crime Reduction Act 2006 s 8 in force in relation to specified local justice areas on 1 April 2010: SI 2010/469.

NOTE 4--Violent Crime Reduction Act 2006 s 14(1) in force in relation to specified local justice areas on 1 April 2010: SI 2010/469.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(iv) Exclusion Orders and Drinking Banning Orders/B. DRINKING BANNING ORDERS/325. Breach of drinking banning orders and interim orders.

325. Breach of drinking banning orders and interim orders.

As from a day to be appointed¹ if the subject² of a drinking banning order³ or of an interim order⁴ does, without reasonable excuse, anything that he is prohibited from doing by the order, he is guilty of an offence⁵. A local authority⁶ or a person specified by the Secretary of State⁷ may bring proceedings for such an offence⁸.

1 At the date at which this volume states the law the Violent Crime Reduction Act 2006 s 11 (see the text and notes 2-8) had not been brought into force in so far as relating to a drinking banning order made on conviction under s 6 (see PARA 320).

2 As to the meaning of 'subject' see PARA 319.

3 I.e. a drinking banning order under the Violent Crime Reduction Act 2006 s 6 (see PARA 320), s 3 (making of banning order by complaint to magistrates' court: see PARA 526) or s 4 (making of banning order in county court proceedings: see PARA 527). As to the meaning of 'drinking banning order' see PARA 319.

4 I.e. an order under the Violent Crime Reduction Act 2006 s 9 (see PARA 322 (orders made on conviction) and PARA 528 (orders made otherwise than on conviction)).

5 Violent Crime Reduction Act 2006 s 11(1) (not yet in force for these purposes). A person guilty of this offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 11(2) (not yet in force for these purposes). As to the standard scale see PARA 142. If a person is convicted of an offence under s 11(1) it is not open to the court by or before which he is convicted to make an order for conditional discharge under the Powers of Criminal Courts (Sentencing) Act 2000 s 12(1)(b) (see PARA 40): s 11(3) (not yet in force for these purposes).

6 As to the meaning of 'local authority' see PARA 324 note 4.

7 The Secretary of State may by order provide that a person of a description specified in the order may bring proceedings for an offence under the Violent Crime Reduction Act 2006 s 11(1) in such cases and such circumstances as may be prescribed by the order: s 11(5) (not yet in force for these purposes). At the date at which this volume states the law no such order had been made.

8 Violent Crime Reduction Act 2006 s 11(4), (5) (not yet in force for these purposes). In proceedings for an offence under s 11(1) a copy of the original drinking banning order or interim order, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents, to the same extent that oral evidence of those things is admissible in those proceedings: s 11(6) (not yet in force for these purposes). As to the meaning of 'proper officer' see PARA 323 note 9. A justices' clerk may certify a copy of an original drinking banning order or interim drinking banning order for the purposes of s 11(6): Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 7.

If proceedings for breach of an order are brought in a youth court, the Children and Young Persons Act 1933 s 47(2) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1267) has effect as if the persons entitled to be present at a sitting for the purposes of those proceedings included one person authorised to be present by a relevant authority: Violent Crime Reduction Act 2006 s 11(7) (not yet in force for these purposes). As to the meaning of 'relevant authority' see PARA 324 note 4.

In relation to proceedings brought against a young person for an offence under s 11(1):

357 (1) the Children and Young Persons Act 1933 s 49 (restrictions on reports of proceedings in which children and young persons are concerned: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1272-1274) does not apply in respect of the young person against whom the proceedings are brought (Violent Crime Reduction Act 2006 s 11(8)(a) (not yet in force for these purposes));

- 358 (2) the Youth Justice and Criminal Evidence Act 1999 s 45 (power to restrict reporting of criminal proceedings involving persons under 18: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1276) does so apply (Violent Crime Reduction Act 2006 s 11(8)(b) (not yet in force for these purposes)).

As to the meaning of 'young person' see PARA 320 note 8. If, in relation to any such proceedings, the court does exercise its power to give a direction under the Youth Justice and Criminal Evidence Act 1999 s 45, it must give its reasons for doing so: Violent Crime Reduction Act 2006 s 11(9) (not yet in force for these purposes). Pending the commencement of the Youth Justice and Criminal Evidence Act 1999 s 45 references in the Violent Crime Reduction Act 2006 s 11(9) to the Youth Justice and Criminal Evidence Act 1999 s 45 are, subject to Sch 2 para 2, references to the Children and Young Persons Act 1933: see the Violent Crime Reduction Act 2006 s 11(10) (not yet in force for these purposes).

UPDATE

325 Breach of drinking banning orders and interim orders

TEXT AND NOTE 1--Violent Crime Reduction Act 2006 s 11 in force for remaining purposes in relation to specified local justice areas on 1 April 2010: SI 2010/469.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(v) Football Banning Orders/326. Football banning orders and regulated football matches.

(v) Football Banning Orders

326. Football banning orders and regulated football matches.

A football banning order (or banning order) is an order made by the court¹ which:

- 1065 (1) in relation to regulated football matches in England and Wales (or, as from a day to be appointed, the United Kingdom)², prohibits the person who is subject to the order from entering any premises for the purpose of attending such matches³; and
- 1066 (2) in relation to regulated football matches outside England and Wales (or, as from a day to be appointed, the United Kingdom), requires that person to report⁴ at a police station⁵.

'Regulated football match' means an association football match⁶ (whether in England and Wales (or, as from a day to be appointed, the United Kingdom) or elsewhere) in which one or both of the participating teams represents:

- 1067 (a) a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference or the League of Wales⁷;
- 1068 (b) a club whose home ground is for the time being situated outside England and Wales⁸; or
- 1069 (c) a country or territory⁹,

and an association football match outside England and Wales¹⁰ involving:

- 1070 (i) a national team appointed by the Football Association to represent England or appointed by the Football Association of Wales to represent Wales¹¹;
- 1071 (ii) a team representing a club which is for the time being a full or associate member of the Football League, the Football Association Premier League, the Football Conference or the League of Wales¹²;
- 1072 (iii) a team representing any country or territory whose football association is for the time being a member of FIFA¹³ where the match is part of a competition or tournament organised by, or under the authority of, FIFA or UEFA¹⁴ and the competition or tournament is one in which a national team appointed by the Football Association to represent England or appointed by the Football Association of Wales to represent Wales is eligible to participate or has participated¹⁵; or
- 1073 (iv) a team representing a club which is for the time being a full or associate member of, or affiliated to, a national football association which is a member of FIFA, where the match is part of a competition or tournament organised by, or under the authority of, FIFA or UEFA, and the competition or tournament is one in which a team representing a club which is for the time being a full or associate member of the Football League, the Football Association Premier League, the Football Conference or the League of Wales is eligible to participate or has participated¹⁶.

1 lie under the Football Spectators Act 1989 Pt II (ss 14-22A: see PARAS 328-331, 530-533). A football banning order may be made on conviction in criminal proceedings (see s 14A; and PARA 328) and following convictions for offences committed outside England and Wales (see s 22; and PARA 331), and may also be made without a conviction on a complaint (see s 14B; and PARA 530) or on the application of a constable (see s 21A; and PARA 531).

2 As from a day to be appointed the Football Spectators Act 1989 s 14(2)-(6) (see the text and notes 3-16; and PARA 328) are amended by the Policing and Crime Act 2009 s 103(1), (2)(a) so as to refer to regulated football matches throughout the United Kingdom. At the date at which this volume states the law no day had been appointed for the coming into force of these amendments.

3 Football Spectators Act 1989 s 14(1), (4)(a) (s 14 substituted by the Football (Disorder) Act 2000 Sch 1 paras 1, 2; Football Spectators Act 1989 s 14(4) prospectively amended (see note 2)).

4 lie in accordance with the Football Spectators Act 1989 Pt II.

5 Football Spectators Act 1989 s 14(1), (4)(a) (as substituted and prospectively amended: see notes 2, 3).

6 References to 'football matches' are to football matches played or intended to be played: Football Spectators Act 1989 s 14(7) (as substituted: see note 3).

7 Football Spectators Act 1989 s 14(2) (as substituted and prospectively amended: see notes 2, 3); Football Spectators (Prescription) Order 2004, SI 2004/2409, art 3(1), (2)(a) (arts 2(2), 3(2), 4(2) substituted by SI 2006/761).

8 Football Spectators (Prescription) Order 2004, SI 2004/2409, art 3(2)(b) (as substituted: see note 7). At the date at which this volume states the law the Football Spectators (Prescription) Order 2004, SI 2004/2409, arts 3, 4 had not been amended so as to refer to regulated football matches throughout the United Kingdom in accordance with the amendments made to the Football Spectators Act 1989 s 14 (see note 2), but it is submitted that those provisions should be construed together as referring to all such matches.

9 Football Spectators (Prescription) Order 2004, SI 2004/2409, art 3(2)(c) (as substituted: see note 7).

10 See note 8.

11 Football Spectators (Prescription) Order 2004, SI 2004/2409, art 4(1), (2)(a) (as substituted: see note 7).

12 Football Spectators (Prescription) Order 2004, SI 2004/2409, art 4(2)(b) (as substituted: see note 7).

13 'FIFA' means the Federation Internationale de Football Associations: Football Spectators (Prescription) Order 2004, SI 2004/2409, art 2(2) (as substituted: see note 6).

14 'UEFA' means the Union des Associations Europeennes de Football: Football Spectators (Prescription) Order 2004, SI 2004/2409, art 2(2) (as substituted: see note 6).

15 Football Spectators (Prescription) Order 2004, SI 2004/2409, art 4(2)(c) (as substituted: see note 7).

16 Football Spectators (Prescription) Order 2004, SI 2004/2409, art 4(2)(d) (as substituted: see note 7).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(v) Football Banning Orders/327. Offences in connection with which football banning orders may be made.

327. Offences in connection with which football banning orders may be made.

An offence in connection with which a football banning order¹ may be made (ie a 'relevant offence') is:

- 1074 (1) an offence² of failure to comply with a football banning order³;
- 1075 (2) an offence of failure to comply with a notice given in connection with the prevention of violence or disorder⁴ at or in connection with a regulated football match⁵;
- 1076 (3) an offence relating to the control of alcohol at sporting events⁶;
- 1077 (4) an offence of harassment, alarm or distress or hatred by reference to race etc⁷;
- 1078 (5) an offence involving the use or threat of violence by the accused towards another person or property⁸;
- 1079 (6) an offence involving the use, carrying or possession of an offensive weapon or a firearm⁹;
- 1080 (7) an offence of being found drunk in a highway or other public place¹⁰;
- 1081 (8) an offence of disorderly behaviour while drunk in a public place¹¹;
- 1082 (9) an offence relating to the possession of alcohol on coaches or trains to or from sporting events¹²;
- 1083 (10) an offence of driving when under the influence of drink or drugs or with an alcohol concentration above the prescribed limit¹³;
- 1084 (11) any offence under the Football (Offences) Act 1991¹⁴; or
- 1085 (12) an offence involving the sale of tickets by unauthorised persons which relates to tickets for a football match¹⁵.

Her Majesty may by Order in Council specify offences ('corresponding offences') under the law of any country outside England and Wales which appear to Her to correspond to any of the offences described above¹⁶.

1 As to the meaning of 'football banning order' see PARA 326; as to the making of a football banning order on conviction see PARA 328.

2 Any reference to an offence in the Football Spectators Act 1989 Sch 1 para 1 includes a reference to any attempt, conspiracy or incitement to commit that offence and a reference to aiding and abetting, counselling or procuring the commission of that offence: s 14(8), Sch 1 para 2 (s 14, Sch 1 substituted, s 14C added, by the Football (Disorder) Act 2000 Sch 1 paras 1, 2, 5).

3 Football Spectators Act 1989 s 14(8), Sch 1 para 1(a) (as substituted: see note 2). The offence referred to in the text is an offence under s 14J(1) (see PARA 329).

4 For these purposes 'violence' means violence against persons or property and includes threatening violence and doing anything which endangers the life of any person; and 'disorder' includes:

359 (1) stirring up hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, or against an individual as a member of such a group (s 14C(1), (2)(a) (as added: see note 4));

360 (2) using threatening, abusive or insulting words or behaviour or disorderly behaviour (s 14C(2)(b) (as so added)); and

- 361 (3) displaying any writing or other thing which is threatening, abusive or insulting (s 14C(2)(c) (as so added)).

'Violence' and 'disorder' are not limited to violence or disorder in connection with football: s 14C(3) (as so added).

5 Football Spectators Act 1989 Sch 1 para 1(a) (as substituted: see note 2). The offence referred to in the text is an offence under s 21C(2) (see PARA 531). For the purposes of Sch 1 'football match' means a match which is a regulated football match for the purposes of Pt II (ss 14-22A: see PARAS 326, 328-331, 530-533): Sch 1 para 4(1) (as so substituted). As to the meaning of 'regulated football match' see PARA 326.

6 Football Spectators Act 1989 Sch 1 para 1(b) (as substituted: see note 2). The offence referred to in the text is an offence under the Sporting Events (Control of Alcohol etc) Act 1985 s 2 or s 2A (alcohol, containers and fireworks: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 599-600) committed by the accused at any football match to which the Football Spectators Act 1989 Sch 1 applies (see note 4) or while entering or trying to enter the ground: Sch 1 para 1(b) (as so substituted).

7 Football Spectators Act 1989 Sch 1 para 1(c), (k), (q) (as substituted (see note 2); and amended by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 9). The offence referred to in the text is an offence under the Public Order Act 1986 s 4A or s 5 or any provision of Pt 3 (ss 17-29) or Pt 3A (ss 29A-29N) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 559, 560, 562-576):

- 362 (1) committed during a period relevant to a football match to which the Football Spectators Act 1989 Sch 1 applies (see note 5) at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises (Sch 1 para 1(c) (as so substituted and amended));
- 363 (2) committed while the accused was on a journey to or from a football match to which to which Sch 1 applies, being an offence as respects which the court makes a declaration that the offence related to football matches (Sch 1 para 1(k) (as so substituted and amended)); or
- 364 (3) any such offence not falling within Sch 1 para 1(c) or (k) which was committed during a period relevant to a football match to which Sch 1 applies and as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period (Sch 1 para 1(q) (as so substituted and amended)).

For the purposes of Sch 1 each of the following periods is 'relevant to' a football match to which Sch 1 applies:

- 365 (a) in the case of a match which takes place on the day on which it is advertised to take place, the period beginning 24 hours before whichever is the earlier of the start of the match and the time at which it was advertised to start and ending 24 hours after it ends (Sch 1 para 4(2)(a) (as so substituted; Sch 1 para 4(2) further substituted by the Violent Crime Reduction Act 2006 Sch 3 para 13)); and
- 366 (b) in the case of a match which does not take place on the day on which it was advertised to take place, the period beginning 24 hours before the time at which it was advertised to start on that day and ending 24 hours after that time (Sch 1 para 4(2)(b) (as so substituted)).

For the purposes of Sch 1 para 1(g)-(o) a person may be regarded as having been on a journey to or from a football match to which Sch 1 applies whether or not he attended or intended to attend the match, and a person's journey includes breaks (including overnight breaks): Sch 1 para 3 (as so substituted).

8 Football Spectators Act 1989 Sch 1 para 1(d), (e), (m), (n), (r), (s) (as substituted: see note 2). The offence must be:

- 367 (1) committed during a period relevant to a football match to which Sch 1 applies (see notes 5, 7) at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises (Sch 1 para 1(d), (e) (as so substituted));
- 368 (2) committed while the accused (or one or each of the accused or the victim) was on a journey to or from a football match to which Sch 1 applies (see note 7) being an offence as respects which the court makes a declaration that the offence related to football matches (Sch 1 para 1(m), (n) (as so substituted)); or
- 369 (3) any such offence not falling within Sch 1 para 1(d), (e), (m) or (n) which was committed during a period relevant to a football match to which Sch 1 applies and as respects which the court makes a declaration that the offence related to that match or to that match and any other

football match which took place during that period (Sch 1 para 1(r), (s) (as so substituted and amended)).

9 Football Spectators Act 1989 Sch 1 para 1(f), (o), (t) (as substituted: see note 2). The offence must be:

- 370 (1) committed during a period relevant to a football match to which Sch 1 applies (see notes 5, 7) at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises (Sch 1 para 1(f) (as so substituted));
- 371 (2) committed while the accused was on a journey to or from a football match to which Sch 1 applies (see note 7) being an offence as respects which the court makes a declaration that the offence related to football matches (Sch 1 para 1(o) (as so substituted)); or
- 372 (3) any such offence not falling within Sch 1 para 1(f) or (o) which was committed during a period relevant to a football match to which Sch 1 applies and as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period (Sch 1 para 1(t) (as so substituted and amended)).

10 Football Spectators Act 1989 Sch 1 para 1(g) (as substituted: see note 2). The offence referred to in the text is an offence under the Licensing Act 1872 s 12 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 977) committed while the accused was on a journey to or from a football match to which the Football Spectators Act 1989 Sch 1 applies (see notes 5, 7) being an offence as respects which the court makes a declaration that the offence related to football matches: Sch 1 para 1(g) (as so substituted).

11 Football Spectators Act 1989 Sch 1 para 1(h) (as substituted: see note 2). The offence referred to in the text is an offence under the Criminal Justice Act 1967 s 91(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 596) committed in a highway or other public place while the accused was on a journey to or from a football match to which the Football Spectators Act 1989 Sch 1 applies (see notes 5, 7) being an offence as respects which the court makes a declaration that the offence related to football matches: Sch 1 para 1(h) (as so substituted).

12 Football Spectators Act 1989 Sch 1 para 1(j) (as substituted: see note 2). The offence referred to in the text is an offence under the Sporting Events (Control of Alcohol etc) Act 1985 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 597) committed while the accused was on a journey to or from a football match to which the Football Spectators Act 1989 Sch 1 applies (see notes 5, 7) being an offence as respects which the court makes a declaration that the offence related to football matches: Sch 1 para 1(j) (as so substituted).

13 Football Spectators Act 1989 Sch 1 para 1(l) (as substituted: see note 2). The offence referred to in the text is an offence under the Road Traffic Act 1988 s 4 or s 5 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 975, 978) committed while the accused was on a journey to or from a football match to which the Football Spectators Act 1989 Sch 1 applies (see notes 5, 7) being an offence as respects which the court makes a declaration that the offence related to football matches: Sch 1 para 1(l) (as so substituted).

14 Football Spectators Act 1989 Sch 1 para 1(p) (as substituted: see note 2). As to the Football Offences Act 1991 see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 601.

15 Football Spectators Act 1989 Sch 1 para 1(u) (as substituted: see note 2). As to this offence see the Criminal Justice and Public Order Act 1994 s 166; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 120.

16 Football Spectators Act 1989 s 22(1) (s 22(1), (1A) amended by the Football (Disorder) Act 2000 Sch 2 paras 9, 17). For this purpose an offence specified in an Order in Council under the Football Spectators Act 1989 s 22(1) will be regarded as corresponding to an offence to which Sch 1 (see the text and notes 1-15) applies notwithstanding that any period specified in the Order is longer than any corresponding period specified in Sch 1: s 22(1A) (s 22(1A) added, s 22(9)-(11) substituted, by the Football (Offences and Disorder) Act 1999s 5(1), (2), (5); as so amended). 'Country' includes territory: Football Spectators Act 1989 s 22A(1) (s 22A added by the Football (Disorder) Act 2000 Sch 2 paras 9, 18). The following Orders in Council have been made: the Football Spectators (Corresponding Offences in Italy) Order 1990, SI 1990/992 (amended by SI 1992/1724); the Football Spectators (Corresponding Offences in Scotland) Order 1990, SI 1990/993 (amended by SI 1992/1724); the Football Spectators (Corresponding Offences in Sweden) Order 1992, SI 1992/708 (amended by SI 1992/1724); the Football Spectators (Corresponding Offences in Norway) Order 1996, SI 1996/1634; the Football Spectators (Corresponding Offences in the Republic of Ireland) Order 1996, SI 1996/1635; the Football Spectators (Corresponding Offences in France) Order 1998, SI 1998/1266; the Football Spectators (Corresponding Offences in Belgium) Order 2000, SI 2000/1108; and the Football Spectators (Corresponding Offences in the Netherlands) Order 2000, SI 2000/1109.

An Order in Council under the Football Spectators Act 1989 s 22(1) relating to any country may include provision specifying the documentary form in which details are to be given of the conviction of a person in that

country of a corresponding offence, the nature and circumstances of the offence, and whether or not the conviction is the subject of proceedings in that country questioning it: s 22(9) (as so substituted). A document in the form so specified is admissible in any proceedings under the Football Spectators Act 1989 Pt II as evidence of the facts stated in it unless the contrary is proved, and must be taken as such a document unless the contrary is proved: s 22(10) (as so substituted). In proceedings against a person under s 22 the facts stated in a document in the form so specified must, on production of the document and proof that that person is the person whose conviction is set out in the document, be taken to be proved unless the contrary is proved: s 22(11) (as so substituted).

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328. Making of football banning orders on conviction.

Where a person (the 'offender') is convicted of a relevant offence¹ the court² must make a football banning order³ in relation to him if satisfied that there are reasonable grounds for believing that making such an order in relation to the offender would help to prevent violence or disorder⁴ at or in connection with any regulated football matches⁵. A banning order may only be made in addition to a sentence imposed in respect of the relevant offence or in addition to an order conditionally discharging an offender⁶.

The prosecution has a right of appeal against a failure by the court to make a banning order under these provisions⁷.

1 For the offences 'relevant' for these purposes see the Football Spectators Act 1989 Sch 1; and PARA 327.

2 For this purpose the 'court' in relation to an offender means the court by or before which he is convicted of the relevant offence or, if he is committed to the Crown Court to be dealt with for that offence, the Crown Court: Football Spectators Act 1989 s 14A(6) (s 14 substituted, ss 14A, 22A added, by the Football (Disorder) Act 2000 Sch 1 paras 1, 2, Sch 2 paras 9, 18).

3 As to the meaning of 'football banning order' see PARA 326. As to the making of football banning orders on conviction for an offence committed outside England and Wales see the Football Spectators Act 1989 s 22; and PARA 331. Where a court makes a banning order the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court) must:

373 (1) give a copy of it to the person to whom it relates (s 18(1)(a) (s 18(1) amended by the Football (Disorder) Act 2000 Sch 2 paras 9, 10, 14; and by the Courts Act 2003 Sch 8 para 333));

374 (2) (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person (Football Spectators Act 1989 s 18(1)(b) (as so amended));

375 (3) as soon as reasonably practicable send a copy of it to the police station (addressed to the officer responsible for the police station) at which the person subject to the order is to report initially (s 18(1)(c) (as so amended)); and

376 (4) in a case where the person subject to the order is detained in legal custody, as soon as reasonably practicable send a copy of it to the person in whose custody he is detained (s 18(1)(d) (as so amended)).

'Enforcing authority' means a prescribed organisation established by the Secretary of State under the Police Act 1996 s 57 (central police organisations: see **POLICE** vol 36(1) (2007 Reissue) PARA 210); Football Spectators Act 1989 s 22A(1) (as added: see note 2). As to the functions of the enforcing authority see ss 19, 21; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 124.

4 As to the meanings of 'violence' and 'disorder' see PARA 327 note 4. A court considering the making of a football banning order is entitled to take into account and give weight to the question of the deterrent effect of the order on other persons: see *R (on the application of White) v Crown Court at Blackfriars* [2008] EWHC 510 (Admin), [2008] 2 Cr App Rep (S) 542, [2008] Crim LR 575; *R v Curtis* [2009] EWCA Crim 1225.

5 Football Spectators Act 1989 s 14A(1), (2) (as added: see note 2). As to the meanings of 'regulated football match' and 'football match' see PARA 326. If the court is not so satisfied it must state that fact in open court and give its reasons: s 14A(3) (as so added). As to the meaning of 'open court' see PARA 23 note 3. Section 14A does not require either repetition or propensity before the court is able to make a football banning order: see *R (on the application of White) v Crown Court at Blackfriars* [2008] EWHC 510 (Admin), [2008] 2 Cr App Rep (S) 542, [2008] Crim LR 575 (distinguishing the Football Spectators Act 1989 s 14A from s 14B (see PARA 530) in that where the offender has actually been involved in football-related violence constituting an offence, a football banning order would be considered appropriate without any need to evaluate the risk of repeat offending).

For the purpose of deciding whether to make a football banning order under these provisions the court may consider evidence led by the prosecution and evidence led by the defence (s 14A(3A) (as so added; s 14A(3A), (3B) further added by the Anti-social Behaviour Act 2003 s 86(5)), and it is immaterial whether the evidence would have been admissible in the proceedings in which the offender was convicted (s 14A(3B) (as so added)).

6 Football Spectators Act 1989 s 14A(4) (as added: see note 2). A banning order may be made in addition to a conditional discharge notwithstanding anything in the Powers of Criminal Courts (Sentencing) Act 2000 s 12 (see PARA 40) and s 14 (see PARA 41): Football Spectators Act 1989 s 14A(5) (as so added).

The court may adjourn any proceedings in relation to an order under s 14A even after sentencing the offender: s 14A(4A) (as so added; s 14A(4A)-(4C) further added by the Serious Organised Crime and Police Act 2005 s 139(10)). If the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest: Football Spectators Act 1989 s 14A(4B) (as so added). The court may not, however, issue a warrant for the offender's arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings: s 14A(4C) (as so added; s 14A(4BA), (4BB), (5A)-(5C) further added, s 14A(4C) amended, by the Violent Crime Reduction Act 2006 Sch 3 paras 1-3, Sch 5).

If the court adjourns or further adjourns any proceedings under the Football Spectators Act 1989 s 14A(4A) or (4B) the court may remand the offender (s 14A(4BA) (as so added)), and a person so remanded may be required by the conditions of his bail not to leave England and Wales before his appearance before the court and, if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his passport to a police constable, if he has not already done so (s 14A(4BB) (as so added)).

In relation to a regulated football match outside England and Wales (or, as from a day to be appointed, the United Kingdom) 'control period' means the period beginning five days before the day of the match and ending when the match is finished or cancelled: s 14(5) (as so substituted; s 14(3), (5), (6) prospectively amended by the Policing and Crime Act 2009 s 103(1), (2)(a) so as to refer to regulated football matches throughout the United Kingdom: at the date at which this volume states the law no day had been appointed for the coming into force of these amendments). In relation to an external tournament (ie a football competition which includes regulated football matches outside England and Wales (or, as from a day to be appointed, the United Kingdom)) 'control period' means any period described in an order made by the Secretary of State beginning five days before the day of the first football match outside England and Wales (or, as from a day to be appointed, the United Kingdom) which is included in the tournament (leaving out of account any football match included in the qualifying or pre-qualifying stages of the tournament) and ending when the last football match outside England and Wales (or, as from a day to be appointed, the United Kingdom) which is included in the tournament is finished or cancelled: s 14(3), (6) (as so substituted and prospectively amended).

The Secretary of State may, if he considers it necessary or expedient to do so in order to secure the effective enforcement of these provisions, by order provide for s 14(5), (6) to have effect in relation to any, or any description of, regulated football match or external tournament as if, for any reference to five days, there were substituted a reference to the number of days (not exceeding ten) specified in the order: s 22A(2) (as so added). In this regard see the Football Spectators (2008 European Championship Control Period) Order 2008, SI 2008/1165.

7 Football Spectators Act 1989 s 14A(5A) (as added: see notes 2, 6). Where the failure is by a magistrates' court appeal is to the Crown Court (s 14A(5A)(a) (as so added)) and where the failure is by the Crown Court appeal is to the Court of Appeal (s 14A(5A)(b) (as so added)). An appeal under s 14A(5A)(b) may be brought only if the Court of Appeal gives permission or the judge who decided not to make an order grants a certificate that his decision is fit for appeal: s 14A(5B) (as so added). An order made on appeal under s 14A (other than one directing that an application be re-heard by the court from which the appeal was brought) is to be treated for these purposes as if it were an order of the court from which the appeal was brought: s 14A(5C) (as so added). In connection with rights of appeal see further s 23; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 112.

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329. Requirements of banning order.

A football banning order¹ must:

- 1086 (1) require the person subject to the order to report initially at a police station specified in the order² within five days beginning with the day upon which the order is made³;
- 1087 (2) require the person subject to the order to give notification of specified events⁴ to the enforcing authority⁵; and
- 1088 (3) impose a requirement as to the surrender⁶, in connection with regulated football matches⁷ outside the United Kingdom, of the travel authorisation of the person subject to the order⁸.

A banning order may also, if the court making the order thinks fit, impose additional requirements on the person subject to the order in relation to any regulated football matches⁹ and the court by which a banning order was made may, on an application¹⁰, vary the order so as to impose, replace or omit any such requirements¹¹.

A person subject to a banning order who fails to comply with any requirement imposed by the order is guilty of an offence¹², although there is provision for exemption from certain requirements to be granted in some circumstances¹³.

1 As to the meaning of 'football banning order' see PARA 326. The restraints imposed by a football banning order under these provisions are not in themselves unlawful under EC Council Directive 73/148 (OJ L172, 20.6.73, p 14) on the abolition of restrictions on movement and residence within the Community for nationals of member states with regard to establishment and the provision of services: see *Gough v Chief Constable of Derbyshire* [2002] EWCA Civ 351, [2002] QB 1213, [2002] 2 All ER 985 (decided under the Football Spectators Act 1989 s 14B (football banning orders made otherwise than on conviction: see PARA 530)). A court considering the making of a football banning order is entitled to take into account and give weight to the question of the deterrent effect of the order on other persons: see *R (on the application of White) v Crown Court at Blackfriars* [2008] EWHC 510 (Admin), [2008] 2 Cr App Rep (S) 542, [2008] Crim LR 575; *R v Curtis* [2009] EWCA Crim 1225.

2 Until a day to be appointed the police station must be in England and Wales; as from that day it may be in England, Wales, Scotland or Northern Ireland: Football Spectators Act 1989 s 14E(2) (ss 14E, 14G, 14J added by the Football (Disorder) Act 2000 Sch 1 paras 1, 2; Football Spectators Act 1989 s 14E(2) prospectively amended by the Policing and Crime Act 2009 s 104(3), Sch 8 Pt 11); Policing and Crime Act 2009 s 104(1), (2)(a) (not yet in force). At the date at which this volume states the law no day had been appointed for these purposes.

3 Football Spectators Act 1989 s 14E(2) (as added and prospectively amended: see note 2). On making the order in relation to the offender the court must explain its effect to him in ordinary language: s 14E(1) (as so added). As to the functions of the officer responsible for the police station to which a person subject to a football banning order reports see ss 19, 21; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 124.

In the case of a person detained in legal custody the requirement under s 14E to report at a police station (and any reporting requirements imposed under s 19, as to which see **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 124) is suspended until his release from custody: s 14E(5) (as so added). If he is released from custody more than five days before the expiry of the period for which the order has effect and he was precluded by his being in custody from reporting initially, the order is to have effect as if it required him to report initially at the police station specified in the order within the period of five days beginning with the date of his release: s 14E(6) (as so added). A person serving a sentence of imprisonment to which an intermittent custody order under the Criminal Justice Act 2003 s 183 (see PARA 100 et seq) relates is to be treated for the purposes of the Football Spectators Act 1989 s 14E as having been detained in legal custody until his final

release; and accordingly any reference in s 14E to release is, in relation to a person serving such a sentence, a reference to his final release: s 14E(7) (as so added; further added by the Criminal Justice Act 2003 Sch 32 paras 55, 57).

Where a person subject to a banning order is released from custody and, in the case of a person who has not reported initially to a police station, is released more than five days before the expiry of the banning order, the person in whose custody he is must (as soon as reasonably practicable) give notice of his release to the enforcing authority: Football Spectators Act 1989 s 18(3) (substituted by the Football (Disorder) Act 2000 Sch 2 paras 9, 14). In relation to a person serving a sentence of imprisonment to which an intermittent custody order under Criminal Justice Act 2003 s 183 relates, any reference in the Football Spectators Act 1989 s 18 to his detention or to his release is construed in accordance with s 14E(7) (see above): s 18(5) (added by the Criminal Justice Act 2003 Sch 32 para 58). As to the meaning of 'enforcing authority' see PARA 328 note 3.

4 The specified events for the purposes of the Football Spectators Act 1989 s 14E(2A) are:

- 377 (1) a change of any of his names (Football Spectators Act 1989 s 14E(2B)(a) (s 14E as added (see note 2); s 14E(2A)-(2C), (8) added by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 5));
- 378 (2) the first use by him after the making of the order of a name for himself that was not disclosed by him at the time of the making of the order (Football Spectators Act 1989 s 14E(2B)(b) (as so added));
- 379 (3) a change of his home address (s 14E(2B)(c) (as so added));
- 380 (4) his acquisition of a temporary address (s 14E(2B)(d) (as so added));
- 381 (5) a change of his temporary address or his ceasing to have one (s 14E(2B)(e) (as so added));
- 382 (6) his becoming aware of the loss of his travel authorisation (s 14E(2B)(f) (as so added));
- 383 (7) receipt by him of a new travel authorisation (s 14E(2B)(g) (as so added));
- 384 (8) an appeal made by him in relation to the order (s 14E(2B)(h) (as so added));
- 385 (9) an application made by him under s 14H(2) (see PARA 330) for termination of the order (s 14E(2B)(i) (as so added)); and
- 386 (10) an appeal made by him under s 23(3) (see **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 112) against the making of a declaration of relevance in respect of an offence of which he has been convicted (s 14E(2B)(j) (as so added)).

'Home address', in relation to any person, means the address of his sole or main residence; 'temporary address', in relation to any person, means the address (other than his home address) of a place at which he intends to reside, or has resided, for a period of at least four weeks; 'loss' includes theft or destruction; and 'new' includes replacement: s 14E(8) (as so added). As to the meaning of 'declaration of relevance' see s 23; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 112 (definition applied by s 14E(8) (as so added)). A notification required by a banning order by virtue of these provisions must be given before the end of the period of seven days beginning with the day on which the event in question occurs and:

- 387 (a) in the case of a change of a name or address or the acquisition of a temporary address, must specify the new name or address (s 14E(2C)(a) (as so added));
- 388 (b) in the case of a first use of a previously undisclosed name, must specify that name (s 14E(2C)(b) (as so added)); and
- 389 (c) in the case of a receipt of a new travel authorisation, must give details of that travel authorisation (s 14E(2C)(c) (as so added)).

5 Football Spectators Act 1989 s 14E(2A) (as added: see notes 2, 4).

6 In accordance with the Football Spectators Act 1989 Pt II (ss 14-22A: see PARAS 326-328, 330-331, 530-533).

7 As to the meanings of 'regulated football match' and 'football match' see PARA 326.

8 Football Spectators Act 1989 s 14E(3) (as added (see note 2); and amended by the Identity Cards Act 2006 s 39(1)).

9 Football Spectators Act 1989 s 14G(1) (as added: see note 2).

10 In an application by the person subject to the order or the person who applied for the order or who was the prosecutor in relation to the order: Football Spectators Act 1989 s 14G(2) (as added: see note 2). In the case of a banning order made by a magistrates' court, the reference in s 14G(2) to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court: s 14G(3) (as so added; amended by the Courts Act 2003 s 8).

11 Football Spectators Act 1989 s 14G(2) (as added: see note 2).

12 Football Spectators Act 1989 s 14J(1)(a) (as added: see note 2). A person guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both: s 14J(2) (as so added). As to the standard scale see **PARA 142**. As to the reciprocal enforcement of these provisions and corresponding provisions for Scotland and Northern Ireland see the Policing and Crime Act 2009 ss 105(1)(a), (2)-(5), 106(1)(a), (2)-(5).

13 See the Football Spectators Act 1989 ss 20, 21; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) **PARA 124**.

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330. Duration and termination of banning order.

A football banning order made on conviction¹ has effect² for a period beginning with the day on which the order is made³, which must not be longer than the maximum or shorter than the minimum⁴. Where the order is made⁵ in addition to a sentence of imprisonment⁶ taking immediate effect, the maximum is ten years and the minimum is six years⁷; and in any other case⁸ the maximum is five years and the minimum is three years⁹.

If a banning order has had effect for at least two-thirds of the period determined under these provisions¹⁰ the person subject to the order may apply to the court by which it was made¹¹ to terminate it¹², and on such an application the court may by order terminate the banning order as from a specified date or refuse the application¹³. Where such an application in respect of a banning order is refused, no further application in respect of the order may be made within the period of six months beginning with the day of the refusal¹⁴.

1 As to the meaning of 'football banning order' see PARA 326; as to the making of football banning orders on conviction see the Football Spectators Act 1989 s 14A; and PARA 328.

2 Ie subject to the Football Spectators Act 1989 Pt II (ss 14-22A: see PARAS 326-329, 331, 530-533).

3 Football Spectators Act 1989 s 14F(1) (ss 14F, 14H added by the Football (Disorder) Act 2000 Sch 1 paras 1, 2).

4 Football Spectators Act 1989 s 14F(2) (as added: see note 3).

5 Ie where the order is made under the Football Spectators Act 1989 s 14A: see PARA 328.

6 'Imprisonment' includes any form of detention: Football Spectators Act 1989 s 14F(3) (as added: see note 3).

7 Football Spectators Act 1989 s 14F(3) (as added: see note 3).

8 See note 5.

9 Football Spectators Act 1989 s 14F(4) (as added: see note 3).

10 Ie under the Football Spectators Act 1989 s 14F: see the text and notes 1-9.

11 In the case of a banning order made by a magistrates' court, the reference in s 14H(1) to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court: s 14H(6) (as added (see note 3); amended by the Courts Act 2003 Sch 8 para 332). The court may order the applicant to pay all or any part of the costs of an application under the Football Spectators Act 1989 s 14H: s 14H(4) (as so added).

12 Football Spectators Act 1989 s 14H(1) (as added: see note 3).

13 Football Spectators Act 1989 s 14H(2) (as added: see note 3). In exercising its powers under s 14H(2) the court must have regard to the person's character, his conduct since the banning order was made, the nature of the offence or conduct which led to it and any other circumstances which appear to it to be relevant: s 14H(3) (as so added). Where a court terminates a banning order under s 14H the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court) must:

390 (1) give a copy of the terminating order to the person to whom the banning order relates (s 18(2)(a) (s 18(2) amended by the Football (Disorder) Act 2000 Sch 2 paras 9, 10, 14; and by the Courts Act 2003 Sch 8 para 333));

391 (2) as soon as reasonably practicable send a copy of it to the enforcing authority and to any prescribed person (Football Spectators Act 1989 s 18(2)(b) (as so amended)); and

392 (3) in a case where the person subject to the banning order is detained in legal custody, as soon as reasonably practicable send a copy of the terminating order to the person in whose custody he is detained (s 18(2)(c) (as so amended)).

As to the meaning of 'enforcing authority' see PARA 328 note 3.

14 Football Spectators Act 1989 s 14H(5) (as added: see note 3).

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331. Football banning orders arising out of offences committed outside England and Wales.

Upon an information being laid before a justice of the peace that a person has been convicted of a corresponding offence¹ in a country² outside England and Wales, the justice may:

- 1089 (1) issue a summons directed to that person requiring him to appear before a magistrates' court to answer to the information³; or
- 1090 (2) issue a warrant to arrest that person and bring him before a magistrates' court⁴.

Where a person so appears or is so brought before a magistrates' court, the court, if satisfied that he is ordinarily resident in England and Wales, and has been convicted in the country outside England and Wales of the corresponding offence, may, unless it appears that the conviction is the subject of proceedings in a court of law in that country questioning the conviction, make a football banning order⁵ in relation to him⁶. A magistrates' court which has power to make a banning order in relation to a person is under a duty to make the order in relation to him if it is satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder⁷ at or in connection with regulated football matches⁸.

1 Her Majesty may by Order in Council specify offences ('corresponding offences') under the law of any country outside England and Wales which appear to Her to correspond to any of the domestic offences described in the Football Spectators Act 1989 Sch 1: see s 22(1), (1A); and PARA 327.

2 As to the meaning of 'country' see PARA 327 note 16.

3 Football Spectators Act 1989 s 22(2)(a) (s 22(2) amended by the Courts Act 2003 Sch 8 para 335, Sch 10).

4 Football Spectators Act 1989 s 22(2)(b) (as amended: see note 3). Section 22(2)(b) is expressed to be subject to s 22(3), which provides that a warrant may not be issued unless the information is in writing and substantiated on oath.

5 As to the meaning of 'football banning order' see PARA 326.

6 Football Spectators Act 1989 s 22(4) (s 22(4) amended, s 22(5) substituted, s 22(5A) added, by the Football (Offences and Disorder) Act 1999 ss 1(2)(b), 5(1), (3)). In proceedings under the Football Spectators Act 1989 s 22(4) the court has the like powers, including power to adjourn the proceedings and meanwhile to remand the defendant on bail (but not in custody), and the proceedings must be conducted as nearly as may be in the like manner, as if the proceedings were the trial of an information for a summary offence: s 22(6).

7 As to the meanings of 'violence' and 'disorder' see PARA 327 note 4.

8 Football Spectators Act 1989 s 22(5) (as substituted (see note 6); s 22(5), (5A), (7) amended, s 22(8) substituted, by the Football (Disorder) Act 2000 Sch 2 paras 9-11, 17). As to the meanings of 'regulated football match' and 'football match' see PARA 326. Where a magistrates' court has power to make a banning order in relation to a person but does not do so, it must state in open court that it is not satisfied that there are such reasonable grounds and give reasons why it is not satisfied: Football Spectators Act 1989 s 22(5A) (as so added and amended). As to the meaning of 'open court' see PARA 23 note 3. Any person aggrieved by the decision of a magistrates' court making a banning order under these provisions may appeal to the Crown Court against the decision: s 22(7) (as so amended).

The Football Spectators Act 1989 ss 14E-14J (see PARAS 328-330), 18-21 (see PARAS 328-329; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARAS 124, 125) apply in relation to a person subject to a banning order under s 22 as they apply in relation to a person subject to a banning order made by a magistrates' court under s 14A (see PARA 328): s 22(8) (as so substituted).

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(vi) Hospital and Guardianship Orders

332. Making of hospital orders and guardianship orders.

The court may make a hospital order¹ where:

- 1091 (1) a person is convicted before the Crown Court² or a magistrates' court³ of an offence punishable with imprisonment⁴ (including where the person would otherwise qualify for a mandatory or required custodial sentence other than a mandatory life sentence for murder or⁵ for a second serious offence)⁶;
- 1092 (2) a special verdict of not guilty by reason of insanity⁷ is returned⁸; or
- 1093 (3) findings have been made that the defendant is under a disability and that he did the act or omission charged against him⁹.

In the case of a person who has been convicted¹⁰ the court may alternatively place him under the guardianship of a local social services authority¹¹ or of such other person approved by a local social services authority as may be so specified¹².

Hospital and guardianship orders may not be made unless specified conditions are satisfied¹³, and where a hospital or guardianship order is made the court may not:

- 1094 (a) pass sentence of imprisonment¹⁴, or impose a fine, or make a community order¹⁵ or a youth rehabilitation order¹⁶ in respect of the offence¹⁷;
- 1095 (b) if the order is a hospital order, make a referral order¹⁸ in respect of the offence¹⁹; or
- 1096 (c) make a supervision order²⁰ or an order²¹ requiring the parent or guardian of a child or young person to enter into a recognisance to take proper care of him and exercise proper control over him²²,

but the court may make any other order which it otherwise has power to make²³.

A person in respect of whom the Crown Court has made a hospital order after a verdict of not guilty by reason of insanity or after findings that the defendant is under a disability²⁴ may appeal to the Court of Appeal against the order²⁵.

1 The court may by order authorise a person's admission to and detention in a hospital specified in the order: Mental Health Act 1983 s 37(4); Criminal Procedure (Insanity) Act 1964 s 5(4) (s 5 substituted, s 5A added, by the Domestic Violence, Crime and Victims Act 2004 s 24(1)).

As to exercising the discretion to make a hospital order see *R v Fairhurst* [1996] 1 Cr App Rep (S) 242, CA; *R v Nafei* [2004] EWCA Crim 3238, [2005] 2 Cr App Rep (S) 127, [2005] Crim LR 409 (not following *R v McBride* [1972] Crim LR 322, CA). For guidance where the criteria for a discretionary life sentence (see PARA 33) and the criteria where a hospital order under the Mental Health Act 1983 s 37 are both met see *R v A* [2005] EWCA Crim 2077, [2006] 1 Cr App Rep (S) 521, [2006] Crim LR 79. As to committal to the Crown Court see the Mental Health Act 1983 ss 43, 44; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 498. Except in the rarest cases, it is desirable that, when the court is considering making a hospital order and particularly a restriction order, the defendant should be represented by counsel: *R v Blackwood* (1974) 59 Cr App Rep 170, [1974] Crim LR 437, CA.

Where a court is minded to make a hospital order or interim hospital order (see PARAS 332, 334) in respect of any person, it may request the primary care trust or local health board for the area in which that person resides or last resided, or the National Assembly for Wales or any other primary care trust or local health board that appears to the court to be appropriate, to furnish the court with such information as the National Assembly for Wales or that primary care trust or local health board has or can reasonably obtain with respect to the hospital or hospitals (if any) in their area or elsewhere at which arrangements could be made for the admission of that person in pursuance of the order; and that primary care trust or local health board, or the National Assembly for Wales, must comply with any such request: Mental Health Act 1983 s 39(1) (amended by the Health Authorities Act 1995 Sch 1 para 107(1), (5), Sch 3; the National Health Service Reform and Health Care Professions Act 2002 Sch 2 paras 42, 46; and SI 2007/961). Where the person concerned has not attained the age of 18 years, the information which may be requested under these provisions includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years: Mental Health Act 1983 s 39(1A) (added by the Mental Health Act 2007 s 31(1)). See also s 45A(8); and PARA 338. See also *R v Marsden* [1968] 2 All ER 341, 52 Cr App Rep 301, CA (unnecessary that offender should be admitted to hospital in part of country where normally resident).

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate:

- 393 (1) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship (Mental Health Act 1983 s 39A(a) (s 39A added by the Criminal Justice Act 1991 s 27(1))); and
- 394 (2) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by the Mental Health Act 1983 s 40(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 478) (s 39A(b) (as so added)),

and that authority must comply with any such request (s 39A (as so added)).

As to the court's power to make a hospital order, guardianship order or interim hospital order in the case of persons suffering from mental illness or severe mental impairment who could otherwise be committed to prison for contempt see the Contempt of Court Act 1981 s 14(4); and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 505. As to a court's power to make interim hospital orders, to remand for a report on the offender's mental condition and to remand to hospital for treatment see PARAS 334-336; and as to the Crown Court's power to make, in addition to a hospital order, a restriction order see PARA 337.

2 In the case of a Crown Court conviction this power does not apply if the sentence for the offence is fixed by law: Mental Health Act 1983 s 37(1) (s 37(1) amended by the Crime (Sentences) Act 1997 Sch 4 para 12(1); and the Mental Health Act 1983 s 37(1) amended, and s 37(1A), (1B) added, by the Criminal Justice Act 2003 Sch 32 paras 37, 38, Sch 37). As to sentences fixed by law see PARA 15. Offences for which the sentence is fixed by law are not excluded in relation to the making of a hospital order by virtue of the Criminal Procedure (Insanity) Act 1964 s 5(2)(a) (see the text and notes 7-8): s 5A(1)(b) (as added: see note 1). As to the Crown Court's powers to make hospital orders in the case of persons committed to the court to be dealt with see PARA 17. In relation to the making of a hospital order by virtue of the Criminal Procedure (Insanity) Act 1964 s 5(2)(a) (see the text and notes 7-8), the Mental Health Act 1983 s 37 has effect as if the reference in s 37(1) (see the text and notes 3-4) to a person being convicted before the Crown Court included a reference to the case where the Criminal Procedure (Insanity) Act 1964 s 5 applies: s 5A(1)(a) (as so added).

3 Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make a hospital order or a guardianship order in his case as being a person suffering from mental illness or severe mental impairment, then, if the court is satisfied that the defendant did the act or made the omission charged, the court may, if it thinks fit, make such order without convicting him: Mental Health Act 1983 s 37(3). See also *R v Lincolnshire (Kesteven) Justices, ex p O'Connor* [1983] 1 All ER 901, [1983] 1 WLR 335, DC; *R v Ramsgate Justices, ex p Kazmarek* (1984) 80 Cr App Rep 366, DC. This power applies only to an offence punishable on summary conviction with imprisonment and does not apply to an offence triable only on indictment: Mental Health Act 1983 s 37(1) (as amended: see note 2); *R v Chippenham Justices, ex p Thompson* (1995) 160 JP 207, DC. Provision is made for an appeal against a hospital order made by a magistrates' court: see the Mental Health Act 1983 s 45(1); and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 505.

4 Mental Health Act 1983 s 37(1) (as amended: see note 2). For these purposes, any reference to an offence punishable on summary conviction with imprisonment is to be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders: Mental Health Act 1983 s 55(2).

5 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 109, which applies only in relation to offences committed between 1 October 1997 and 4 April 2005: see PARA 77.

6 See the Mental Health Act 1983 s 37(1A) (as added (see note 2); amended by the Violent Crime Reduction Act 2006 Sch 1 para 2; and the Criminal Justice and Immigration Act 2008 Sch 26 para 8), which provides that the court is not prevented from making an order for the admission of an offender to a hospital only because the offence in question is an offence the sentence for which is:

- 395 (1) a life sentence for public protection (as to this sentence and when it sentences fall to be imposed see PARA 19 note 4);
- 396 (2) the required custodial sentence for possession of a firearm or using a person to mind a weapon (as to this sentence and when it fall to be imposed see PARA 19 note 5);
- 397 (3) the specified minimum term for a third class A drug trafficking offence (as to this sentence and when it fall to be imposed see PARA 19 note 6); or
- 398 (4) the specified minimum term for a third domestic burglary (as to this sentence and when it fall to be imposed see PARA 19 note 7).

The Mental Health Act 1983 s 37(1A) is to be read in accordance with the Criminal Justice Act 2003 s 305(4) (see PARA 19): Mental Health Act 1983 s 37(1B) (as so added).

7 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

8 Criminal Procedure (Insanity) Act 1964 ss 5(1)(a), (2)(a), 5A(1)(b) (as substituted: see note 1). Where a hospital order is made under s 5 it is stated that the order may be made with or without a restriction order (s 5(2)(a) (as so substituted)), although where the offence to which the special verdict or the findings (see the text and note 9) relate is an offence the sentence for which is fixed by law, and the court has power to make a hospital order, the court must make a hospital order with a restriction order (whether or not it would have power to make a restriction order apart from this provision): Criminal Procedure (Insanity) Act 1964 s 5(3) (as so substituted). As to the meaning of 'restriction order' see the Mental Health Act 1983 s 41; and PARA 337 (definition applied by the Criminal Procedure (Insanity) Act 1964 s 5(4) (as substituted: see note 1)). In these circumstances the court may also make a supervision order or an order for the absolute discharge of the accused: see s 5(2)(b), (c); and PARAS 40, 368.

9 Criminal Procedure (Insanity) Act 1964 s 5(1)(b) (as substituted: see note 1). See also note 8. As to such findings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265. Where a person is detained in pursuance of a hospital order which the court had power to make by virtue of s 5(1)(b), and the court also made a restriction order, and that order has not ceased to have effect, the Secretary of State, if satisfied after consultation with the responsible clinician that the person can properly be tried, may remit the person for trial, either to the court of trial or to a prison (s 5A(4) (as so added; amended by the Mental Health Act 2007 s 15(4))). As to the 'responsible clinician' for the purposes of the Mental Health Act 1983 see PARA 334 note 17.

10 Ie where the Mental Health Act 1983 s 37(1) (see the text and notes 1-4) applies.

11 For these purposes 'local social services authority' means a council which is a local authority for the purposes of the Local Authority Social Services Act 1970 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23: Mental Health Act 1983 s 145(1)).

12 Mental Health Act 1983 s 37(1) (as amended: see note 2).

13 As to the specified conditions see PARA 333.

14 For these purposes 'sentence of imprisonment' includes any sentence or order for detention: Mental Health Act 1983 s 37(8) (amended by the Youth Justice and Criminal Evidence Act 1999 Sch 4 para 11; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 90(1), (6); the Criminal Justice Act 2003 Sch 32 paras 37, 38(c); and the Criminal Justice and Immigration Act 2008 Sch 4 para 30).

15 Ie within the meaning of the Criminal Justice Act 2003 Pt 12 (ss 142-305) (see PARAS 163, 168 et seq).

16 Ie within the meaning of the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8) (see PARAS 163, 202 et seq).

17 Mental Health Act 1983 s 37(8)(a) (as amended: see note 14).

18 Ie within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 (see s 16(2), (3); and PARA 344).

19 Mental Health Act 1983 s 37(8)(b) (as amended: see note 14).

- 20 le within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 s 63 (see PARA 250 et seq).
- 21 le an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 150 (see PARA 312; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288).
- 22 Mental Health Act 1983 s 37(8)(c) (as amended: see note 14).
- 23 Mental Health Act 1983 s 37(8) (as amended: see note 14).
- 24 le under the Criminal Procedure (Insanity) Act 1964 s 5 or s 5A.
- 25 Criminal Appeal Act 1968 s 16A(1)(a) (ss 16A, 16B added by the Domestic Violence, Crime and Victims Act 2004 s 25). Such an appeal lies only with the leave of the Court of Appeal or, if the judge of the court of trial (ie, where the Crown Court comprises justices of the peace, the judge presiding: Criminal Appeal Act 1968 s 51(1) (definition substituted by the Courts Act 1971 Sch 8 para 57(3))) grants a certificate that the case is fit for appeal: Criminal Appeal Act 1968 s 16A(2) (as so added). If on such an appeal the Court of Appeal considers that the appellant should be dealt with differently from the way in which the court below dealt with him:
 - 399 (1) it may quash any order which is the subject of the appeal (s 16B(1)(a) (as so added)); and
 - 400 (2) it may make such order, whether by substitution for the original order or by variation of or addition to it, as it thinks appropriate for the case and as the court below had power to make (s 16B(1)(b) (as so added)).

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333. Conditions for making hospital and guardianship orders.

The court may make a hospital or guardianship order¹ if:

1097 (1) the court is satisfied, on the written or oral evidence of two registered medical practitioners², that the offender or person in respect of whom the order is proposed to be made³ is suffering from mental disorder⁴ and that either:

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1. (a) the mental disorder from which the person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him⁵; or
2. (b) in the case of a person who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship⁶; and

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1098 (2) the court is of the opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the person, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of such a hospital or guardianship order⁷.

A hospital order may not be made in respect of a conviction⁸ unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for the offender's case or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the making of such an order⁹. In relation to the making of a hospital order following a special verdict or a finding that a person is under a disability¹⁰ it is the duty of the managers of the hospital specified in the order to admit him in accordance with it¹¹. A guardianship order may not be made unless the court is satisfied that the local social services authority¹² or person under whose guardianship the person is to be placed is willing to receive the person into guardianship¹³.

¹ ie under the Mental Health Act 1983 s 37(1) or the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA 332).

² At least one of the registered medical practitioners must have been approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482); see s 54(1); and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492. The evidence may be given by way of written report, but the court may require the practitioner signing the report to give oral evidence: see s 54(2); and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492. It is desirable in every case where hospital orders and restriction orders (see PARA 337) are being considered that oral evidence should be given by the doctor who will be in charge of the case if the orders are made, or by a doctor fully informed of his views: *R v Blackwood* (1974) 59 Cr App Rep 170, [1974] Crim LR 437, CA. As to medical evidence see further the Mental Health Act 1983 s 54(3); and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492.

³ In relation to the making of any order under the Mental Health Act 1983 by virtue of the Criminal Procedure (Insanity) Act 1964 (see PARA 332), references in the Mental Health Act 1983 to an offender are to be construed as including references to a person in whose case the Criminal Procedure (Insanity) Act 1964 s 5

applies; and references to an offence are to be construed accordingly: s 5A(3) (s 5A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1)).

4 As to the meaning of 'mental disorder' see the Mental Health Act 1983 s 1; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402 (definition applied by s 145(1) (amended by the Mental Health Act 2007 Sch 1 paras 1, 17)).

5 Mental Health Act 1983 s 37(2)(a)(i) (s 37(2)(a) amended by the Mental Health Act 2007 s 4(1), (5), Sch 1 paras 1, 7). As to the effect of hospital orders see s 40; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 494.

6 Mental Health Act 1983 s 37(2)(a)(ii) (as amended: see note 5). As to the effect of guardianship orders see s 40; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 494.

7 Mental Health Act 1983 s 37(2)(b).

8 le under the Mental Health Act 1983 s 37(1) (see PARA 332).

9 Mental Health Act 1983 s 37(4) (amended by the Crime (Sentences) Act 1997 Sch 4 para 12(3), Sch 6; and by the Mental Health Act 2007 s 10(1), (4)). The court may, pending a person's admission within the specified period, give such directions as it thinks fit for his conveyance to, and detention in, a place of safety: Mental Health Act 1983 s 37(4) (as so amended). If within the period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the order, he may give directions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified; and, where such directions are given: (1) the Secretary of State must cause the person having the custody of the patient to be informed (s 37(5)(a)); and (2) the hospital order has effect as if the hospital specified in the directions were substituted for the hospital specified in the order (s 37(5)(b)). 'Place of safety', in relation to a person who is not a child or young person, means any police station, prison or remand centre, or any hospital the managers of which are willing temporarily to receive him, and in relation to a child or young person has the same meaning as in the Children and Young Persons Act 1933: Mental Health Act 1983 s 55(1). For these purposes 'child' and 'young person' have the same meanings as in the Children and Young Persons Act 1933 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 3); Mental Health Act 1983 s 55(1). As to the meaning of 'place of safety' in the Children and Young Persons Act 1933 see s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 608. The period of 28 days referred to in the Mental Health Act 1983 s 37(4), (5) may be reduced by order of the Secretary of State: s 54A (added by the Criminal Justice Act 1991 s 27(2)). At the date at which this volume states the law no such order had been made.

10 le under the Criminal Procedure (Insanity) Act 1964 s 5(2)(a) (see PARA 332).

11 Criminal Procedure (Insanity) Act 1964 s 5A(1)(c) (as added: see note 3).

12 See PARA 332 note 11.

13 Mental Health Act 1983 s 37(6). See *R (on the application of Buckowicki) v Northamptonshire County Council* [2007] EWHC 310 (Admin), [2007] All ER (D) 140 (Feb).

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334. Interim hospital orders.

Before making a hospital order¹ (or dealing in some other way²) in respect of a person:

- 1099 (1) convicted before the Crown Court³ of an offence punishable with imprisonment⁴ or convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment⁵;
- 1100 (2) in relation to whom a special verdict of not guilty by reason of insanity has been returned⁶; or
- 1101 (3) in relation to whom findings have been made that he is under a disability and that he did the act or omission charged against him⁷,

the court⁸ may make an interim hospital order⁹ if it is satisfied, on the written or oral evidence of two registered medical practitioners¹⁰:

- 1102 (a) that the offender is suffering from mental disorder¹¹; and
- 1103 (b) that there is reason to suppose that the mental disorder from which the person is suffering is such that it may be appropriate for a hospital order to be made in his case¹².

A hospital order may not be made in respect of a conviction¹³ unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for the offender's case or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the making of such an order¹⁴. It is submitted that in relation to the making of a hospital order following a special verdict or a finding that a person is under a disability it is the duty of the managers of the hospital specified in the order to admit him in accordance with it¹⁵.

An interim hospital order remains in force for such period, not exceeding 12 weeks, as the court may specify when making the order¹⁶, but may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible clinician, that the continuation of the order is warranted¹⁷. No such order may, however, continue in force for more than 12 months in all; and the court must terminate the order if it makes a hospital order in respect of the offender or decides, after considering the written or oral evidence of the responsible clinician, to deal with the offender in some other way¹⁸.

If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and must, after being arrested, be brought as soon as practicable before the court that made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made¹⁹.

A person in respect of whom the Crown Court has made an interim hospital order after a verdict of not guilty by reason of insanity or after findings that the defendant is under a disability²⁰ may appeal to the Court of Appeal against the order²¹.

1 le under the Mental Health Act 1983 s 37(1) or the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA 332).

2 Dealing in some other way includes, in the case of a person in respect of whom a special verdict has been returned or a finding of disability has been made, the making of a supervision order or an order for absolute discharge: see the Criminal Procedure (Insanity) Act 1964 s 5(2)(b), (c); PARA 332 note 8; and PARAS 40, 368.

3 As to the powers of the Crown Court to make an interim hospital order in the case of a person committed to the court to be dealt with see PARA 17.

4 le other than an offence the sentence for which is fixed by law: Mental Health Act 1983 s 38(1). As to sentences fixed by law see PARA 15. Offences for which the sentence is fixed by law are not excluded in relation to the making of a hospital order by virtue of the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA 332): s 5A(2)(d)(ii) (s 5A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1)).

5 Mental Health Act 1983 s 38(1).

6 Criminal Procedure (Insanity) Act 1964 s 5A(2)(d)(i) (as added: see note 4). As to such verdicts see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31; and as to the power to make a hospital order in respect of such findings see PARA 332.

7 Criminal Procedure (Insanity) Act 1964 s 5A(2)(d) (as added: see note 4). As to such findings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265; and as to the power to make a hospital order in respect of such findings see PARA 332.

8 le, in the case of a convicted person, the court before or by which he is convicted: Mental Health Act 1983 s 38(1).

9 le an order authorising the person's admission to such hospital as may be specified in the order and his detention there: Mental Health Act 1983 s 38(1). For the power to require information as to hospitals before making an order see s 39; and PARA 332 note 1. In the case of an offender who is subject to an interim hospital order, the court may make a hospital order without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard: s 38(2) (amended by the Legal Services Act 2007 Sch 21 paras 53, 56). 'Authorised person' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of the Legal Services Act 2007: see Sch 2 para 3; and **LEGAL PROFESSIONS** vol 65 (2008) PARA 482): Mental Health Act 1983 s 55(1) (definition added by the Legal Services Act 2007 Sch 21 para 59). See also the Mental Health Act 1983 s 45A(8); and PARA 338.

10 At least one of the registered medical practitioners must have been approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482) (see s 54(1); and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492), and at least one of the registered medical practitioners whose evidence is taken into account must be employed at the hospital which is to be specified in the order (s 38(3)). See also *R v Blackwood* (1974) 59 Cr App Rep 170, [1974] Crim LR 437, CA; and PARA 333 note 2.

11 Mental Health Act 1983 s 38(1)(a) (amended by the Mental Health Act 2007 Sch 1 paras 1, 8). As to the meaning of 'mental disorder' see PARA 333 note 4.

12 Mental Health Act 1983 s 38(1)(b).

13 le under the Mental Health Act 1983 s 37(1) (see PARA 332). Section 38(4) is not expressly limited to hospital orders made in respect of a conviction but such limitation may be inferred from the identical provisions set out in s 37(4) (see PARA 332), which are expressed to be so limited. The Criminal Procedure (Insanity) Act 1964 s 5A(1)(c) makes provision alternative to the Mental Health Act 1983 s 37(4) in respect of a person in relation to whom a special verdict of not guilty by reason of insanity has been returned or findings that he is under a disability have been made (see PARA 332) and it is submitted that a corresponding differentiation in treatment should be made under s 38(4).

14 Mental Health Act 1983 s 38(4) (amended by the Mental Health Act 2007 s 10(1), (5)). The court may, pending a person's admission within the specified period, give such directions as it thinks fit for his conveyance to, and detention in, a place of safety: Mental Health Act 1983 s 38(4) (as so amended). See note 13; and as to the meaning of 'place of safety' see PARA 333 note 9. The period may be reduced by an order made by the Secretary of State: s 54A (added by the Criminal Justice Act 1991 s 27(2)). At the date at which this volume states the law no such order had been made.

15 See the Criminal Procedure (Insanity) Act 1964 s 5A(1)(c); and note 13.

16 Mental Health Act 1983 s 38(5)(a).

17 Mental Health Act 1983 s 38(5)(b) (amended by the Mental Health Act 2007 s 10(1), (5)). 'Responsible clinician', in relation to a person liable to be detained in a hospital within the meaning of the Mental Health Act 1983 Pt 2 (ss 2-34: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 435 et seq), means the approved clinician with overall responsibility for the patient's case: s 55(1) (definition added by the Mental Health Act 2007 s 11(1), (7)).

18 Mental Health Act 1983 s 38(5) (amended by the Crime (Sentences) Act 1997 s 49(1); and the Mental Health Act 2007 s 10(5)). See also the Mental Health Act 1983 s 45A(8); and PARA 338. The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard: s 38(6).

19 Mental Health Act 1983 s 38(7).

20 Ie under the Criminal Procedure (Insanity) Act 1964 s 5 or s 5A.

21 Criminal Appeal Act 1968 s 16A(1)(a) (ss 16A, 16B added by the Domestic Violence, Crime and Victims Act 2004 s 25). Such an appeal lies only with the leave of the Court of Appeal; or if the judge of the court of trial (ie, where the Crown Court comprises justices of the peace, the judge presiding: Criminal Appeal Act 1968 s 51(1) (definition substituted by the Courts Act 1971 Sch 8 para 57(3))) grants a certificate that the case is fit for appeal: Criminal Appeal Act 1968 s 16A(2) (as so added). If on such an appeal the Court of Appeal considers that the appellant should be dealt with differently from the way in which the court below dealt with him:

401 (1) it may quash any order which is the subject of the appeal (s 16B(1)(a) (as so added)); and

402 (2) it may make such order, whether by substitution for the original order or by variation of or addition to it, as it thinks appropriate for the case and as the court below had power to make (s 16B(1)(b) (as so added)).

The fact that an appeal is pending against an interim hospital order does not affect the power of the court below to renew or terminate the order or to deal with the appellant on its termination (s 16B(2) (as so added)); and where the Court of Appeal quashes such an order but does not pass any sentence or make any other order in its place, the court may (subject to the Criminal Justice and Public Order Act 1994 s 25 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1170)) direct the appellant to be kept in custody or released on bail pending his being dealt with by the court below (Criminal Appeal Act 1968 s 11(5) (added by the Mental Health (Amendment) Act 1982 Sch 3 para 37; and amended by the Mental Health Act 1983 Sch 4 para 23(d); and the Criminal Justice and Public Order Act 1994 Sch 10 para 20)).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(vi) Hospital and Guardianship Orders/335. Remand to hospital for report on mental condition.

335. Remand to hospital for report on mental condition.

The Crown Court or a magistrates' court may remand an accused person¹, or a person in respect of whom a special verdict has been returned or a finding of disability has been made², to a hospital specified by the court for a report on his mental condition³, if:

1104 (1) the court is satisfied, on the written or oral evidence of a registered medical practitioner⁴, that there is reason to suspect that the person in question is suffering from mental disorder⁵; and

1105 (2) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail⁶,

but those powers may not be exercised by the Crown Court in respect of a person who has been convicted⁷ before the court if the sentence for the offence of which he has been convicted is fixed by law⁸.

A hospital remand may not be made unless the court is satisfied on the written or oral evidence of the approved clinician who would be responsible for making the report or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the remand⁹. Where a court has so remanded a person, it may further remand him if it appears to the court, on the written or oral evidence of the approved clinician responsible for making the report, that a further remand is necessary for completing the assessment of the person's mental condition¹⁰. An accused person may not be remanded or further remanded for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so¹¹.

If a person absconds from a hospital to which he has been remanded, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and must, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been so remanded¹².

1 For these purposes, an accused person is: (1) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise been dealt with for the offence on which he has been arraigned (Mental Health Act 1983 s 35(2)(a)); (2) in relation to a magistrates' court, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or he has consented to the exercise by the court of the powers conferred by s 35 (s 35(2)(b)).

2 Criminal Procedure (Insanity) Act 1964 s 5A(2)(c) (s 5A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1)). As to such verdicts and findings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265; and as to the power to make a hospital order in respect of such verdicts and findings see PARA 332.

3 Mental Health Act 1983 s 35(1). A person remanded to hospital is entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner (or approved clinician)

chosen by him and to apply to the court on the basis of it for his remand to be terminated: s 35(8) (amended by the Mental Health Act 2007 s 10(1), (2)).

4 The practitioner must be approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482): see s 54(1); and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492. See also *R v Blackwood* (1974) 59 Cr App Rep 170, [1974] Crim LR 437, CA; and PARA 333 note 2.

5 Mental Health Act 1983 s 35(3)(a) (amended by the Mental Health Act 2007 Sch 1 paras 1, 5). As to the meaning of 'mental disorder' see PARA 333 note 4.

6 Mental Health Act 1983 s 35(3)(b).

7 If this exclusion does not apply in respect of a person in respect of whom a special verdict has been returned or a finding of disability has been made: Criminal Procedure (Insanity) Act 1964 s 5A(2)(a) (as added: see note 2).

8 Mental Health Act 1983 s 35(3). As to sentences fixed by law see PARA 15.

9 Mental Health Act 1983 s 35(4) (amended by the Mental Health Act 2007 s 10(1), (2)). The court may, pending a person's admission within the specified period, give such directions as it thinks fit for his conveyance to, and detention in, a place of safety: Mental Health Act 1983 s 35(4) (as so amended). As to remands under the Mental Health Act 1983 s 35 see *R (on the application of Bitcon) v West Allerdale Magistrates' Court* [2003] EWHC 2460 (Admin), 147 Sol Jo LB 1028, [2003] All ER (D) 33 (Sep). Where an accused person is so remanded: (1) a constable or any other person directed to do so by the court must convey the accused person to the hospital specified by the court within the period specified in the Mental Health Act 1983 s 35(4) (s 35(9)(a)); and (2) the managers of the hospital must admit him within that period and thereafter detain him in accordance with the provisions of s 35 (s 35(9)(b)). As to the meaning of 'responsible clinician' see PARA 334 note 17. As to the meaning of 'place of safety' see PARA 333 note 9.

10 Mental Health Act 1983 s 35(5) (amended by the Mental Health Act 2007 s 10(2)). The power of further remanding a person may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard: s 35(6) (amended by the Legal Services Act 2007 Sch 21 paras 53, 54). As to the meaning of 'authorised person' see PARA 334 note 9.

11 Mental Health Act 1983 s 35(7).

12 Mental Health Act 1983 s 35(10).

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336. Remand to hospital for treatment.

Instead of remanding an accused person¹ or a person in respect of whom a special verdict has been returned or a finding of disability has been made² in custody, the Crown Court may remand such person to a hospital specified by the court if satisfied, on the written or oral evidence of two registered medical practitioners³, that:

- 1106 (1) he is suffering from mental disorder⁴ of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment⁵; and
 1107 (2) appropriate medical treatment is available for him⁶.

However, the court may not so remand a person unless it is satisfied, on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital and for his admission to it within the period of seven days beginning with the date of the remand⁷. Where a court has so remanded a person it may further remand him if it appears to the court, on the written or oral evidence of the responsible clinician⁸, that a further remand is warranted⁹. A person may not be remanded or further remanded for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so¹⁰.

If a person absconds from a hospital to which he has been remanded, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and must, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it could have dealt with him if he had not been so remanded¹¹.

1 For these purposes, an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment (other than an offence the sentence for which is fixed by law) or who at any time before sentence is in custody in the course of a trial before that court for such an offence: Mental Health Act 1983 s 36(2). In relation to a case where the Criminal Procedure (Insanity) Act 1964 s 5 applies (see note 2; and PARA 332), the exclusion in respect of offences the sentence for which are fixed by law does not apply: Mental Health Act 1983 s 5A(2)(b) (s 5A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1)). As to sentences fixed by law see PARA 15.

2 Criminal Procedure (Insanity) Act 1964 s 5A(2)(c) (as added: see note 1). As to such verdicts and findings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265; and as to the power to make a hospital order in respect of such verdicts and findings see PARA 332.

3 At least one of the registered medical practitioners must be approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 482); see s 54(1) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 492). See also *R v Blackwood* (1974) 59 Cr App Rep 170, [1974] Crim LR 437, CA; and PARA 333 note 2. A person remanded to hospital is entitled to obtain at his own expense an independent report on his mental condition from a registered medical practitioner (or approved clinician) chosen by him and to apply to the court on the basis of it for his remand to be terminated under the Mental Health Act 1983 s 36(6) (see the text and note 10): s 36(7) (amended by the Mental Health Act 2007 s 10(1), (2)).

4 As to the meaning of 'mental disorder' see PARA 333 note 4.

5 Mental Health Act 1983 s 36(1)(a) (s 36(1)(a) substituted, s 36(1)(b) amended, by the Mental Health Act 2007 s 5, Sch 1 paras 1, 6).

6 Mental Health Act 1983 s 36(1)(b) (as amended: see note 5).

7 Mental Health Act 1983 s 36(3) (amended by the Mental Health Act 2007 s 10(1), (3)). Where an accused person is so remanded: (1) a constable or any other person directed to do so by the court must convey the accused person to the hospital specified by the court within the period specified in the Mental Health Act 1983 s 36(3) (ss 35(9)(a), 36(8)); and (2) the managers of the hospital must admit him within that period and thereafter detain him in accordance with the provisions of s 36 (s 35(9)(b)). If the court is satisfied as described in s 36(3), it may, pending the person's admission, give directions for his conveyance to, and detention in, a place of safety: s 36(3) (as so amended). As to the meaning of 'place of safety' see PARA 333 note 9.

8 As to the meaning of 'responsible clinician' see PARA 334 note 17.

9 Mental Health Act 1983 s 36(4) (amended by the Mental Health Act 2007 s 10(1), (3)). The power of further remanding a person may be exercised by the court without his being brought before the court if he is represented by an authorised person who is given an opportunity of being heard: s 36(5) (amended by the Legal Services Act 2007 Sch 21 paras 53, 55). As to the meaning of 'authorised person' see PARA 334 note 9.

10 Mental Health Act 1983 s 36(6).

11 Mental Health Act 1983 ss 35(10), 36(8).

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337. Restriction orders.

Where a hospital order¹ is made² by the Crown Court³ and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm⁴ so to do, the court may further order that the offender be subject to special statutory restrictions⁵ (ie may make a 'restriction order')⁶. However, a restriction order may not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court⁷ has given evidence orally before the court⁸.

While a person is subject to a restriction order, the responsible medical officer must at such intervals, not exceeding one year, as the Secretary of State may direct, examine and report to the Secretary of State on that person; and every such report must contain such particulars as the Secretary of State may require⁹.

1 See PARA 332.

2 These provisions (ie the Mental Health Act 1983 s 41: see the text and notes 3-9) are expressed to be applicable only in relation to a hospital order made in respect of an offender (see s 41(1)); however a hospital order made under the Criminal Procedure (Insanity) Act 1964 s 5(2) in respect of a person in respect of whom a special verdict has been returned or a finding of disability has been made may also be made with or without a restriction order (see s 5(2)(a); and PARA 332).

3 As to the power of the Crown Court to make a restriction order in the case of a person committed to the court to be dealt with see PARA 17.

4 'Serious' in the term 'serious harm' qualifies 'harm' rather than risk. 'Serious harm' is not limited to personal injury, nor need it relate to the public in general. It suffices if a category of persons, or even a single person, is adjudged to be at risk, although the category of persons excludes the offender himself: *R v Birch* [1989] Cr App Rep (S) 202, [1989] Crim LR 757, CA.

5 The special restrictions applicable to a person in respect of whom a restriction order is in force are:

403 (1) none of the provisions of the Mental Health Act 1983 Pt II (ss 2-34) (compulsory admission to hospital or guardianship: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 460 et seq) relating to the duration, renewal and expiration of authority for the detention of patients applies; and the patient continues to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under Pt II or absolutely discharged under s 42, s 73, s 74 or s 75 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 501, 570-572) (s 41(3)(a));

404 (2) none of the provisions of Pt II relating to community treatment orders and community patients (ie ss 17A-17G: see **MENTAL HEALTH**) apply (s 41(3)(aa) (added by the Mental Health (Patients in the Community) Act 1995 Sch 1 para 5; amended by the Mental Health Act 2007 Sch 3 paras 1, 17));

405 (3) no application may be made to the appropriate tribunal in respect of a patient under the Mental Health Act 1983 s 66 or s 69(1) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (s 41(3)(b) (amended by SI 2008/2833));

406 (4) the following powers are exercisable only with the consent of the Secretary of State:

1. (a) the power to grant leave of absence to the patient under the Mental Health Act 1983 s 17 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 506) (s 41(3)(c)(i)) and, if leave of absence is so granted, the power to recall the patient under s 17 vests in the Secretary of State as well as the responsible clinician (s 41(3)(c) (amended by the Mental Health Act 2007 s 10(1), (6)));

2

2. (b) the power to transfer the patient in pursuance of regulations under the Mental Health Act 1983 s 19 or in pursuance of s 19(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 512) (s 41(3)(c)(ii) (amended by the Crime (Sentences) Act 1997 s 49(2))); and

3

3. (c) the power to order the discharge of the patient under the Mental Health Act 1983 s 23 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 523) (s 41(3)(c)(iii)); and

4

- 407 (5) the power of the Secretary of State to recall the patient under s 17 and the power to take the patient into custody and return him under s 18 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 507) may be exercised at any time (s 41(3)(d)).

In relation to any such patient, s 40(4) has effect as if it referred to Sch 1 Pt II instead of Sch 1 Pt I (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 487 et seq): s 41(3). As to the meaning of 'responsible clinician' see PARA 334 note 17.

6 Mental Health Act 1983 s 41(1). As to the effect of a restriction order and the circumstances in which such an order should be made see *R v Birch* (1990) 90 Cr App Rep 78, [1989] Crim LR 757, CA (court not obliged to follow advice of medical witnesses; seriousness of offence committed by offender no more important than other factors to which the Mental Health Act 1983 s 41 required court to have regard); and see the following cases decided under the Mental Health Act 1959: *R v Gardiner* [1967] 1 All ER 895, 51 Cr App Rep 187, CA (if a restriction order is made, the safer course is to make the order without limit of time, unless the medical practitioners are confident that recovery will take place within a fixed period); *R v Haynes* (1981) 3 Cr App Rep (S) 330, [1982] Crim LR 245, CA (no analogy between a restriction order and a determinate sentence of imprisonment). See also *R v Nwobia* [1996] 1 Cr App Rep (S) 170, 26 BMLR 157, CA (without medical evidence that the offender can be cured within a particular period, it is unwise to make a restriction order with limit of time). Before making an order, the court should ascertain that the hospital to which the offender is to be admitted has the facilities for his safe custody: *R v Morris* [1961] 2 QB 237, 45 Cr App Rep 185, CCA; *R v Higginbotham* [1961] 3 All ER 616, 45 Cr App Rep 379, CCA; *R v Cox* [1968] 1 All ER 386, 52 Cr App Rep 130, CA. Arrangements may be made for an offender's admission to a hospital in any part of the country where a vacancy exists: *R v Marsden* [1968] 2 All ER 341, 52 Cr App Rep 301, CA. Except in the rarest cases, it is desirable that the defendant should be represented by counsel: *R v Blackwood* (1974) 59 Cr App Rep 170, [1974] Crim LR 437, CA. The decision whether to make a restriction order is the responsibility of the judge; the judge may make such an order contrary to the recommendations of the medical witnesses: *R v Royse* (1981) 3 Cr App Rep (S) 58, CA; *R v Birch*. A hospital order does not cease to have effect under the Mental Health Act 1983 s 40(5) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 494) if a restriction order in respect of the patient is in force at the material time: s 41(4). An offender who becomes subject to a restriction order becomes a 'patient' within the meaning of the Mental Health Act 1983 and remains such until such time as he is absolutely discharged: *R v Merseyside Mental Health Review Tribunal, ex p K* [1990] 1 All ER 694, (1989) Times, 15 June, CA. Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of the Mental Health Act 1983 s 40 and Sch 1 Pt I apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect: s 41(5).

7 le under the Mental Health Act 1983 s 37(2)(a) (see PARA 333).

8 Mental Health Act 1983 s 41(2).

9 Mental Health Act 1983 s 41(6).

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338. Hospital and limitation directions.

Where, in the case of a person convicted before the Crown Court of an offence the sentence for which is not fixed by law¹:

- 1108 (1) the court is satisfied, on the written or oral evidence of two registered medical practitioners², that the offender is suffering from mental disorder³, that the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment⁴, and that appropriate medical treatment is available for him⁵; and
- 1109 (2) the court considers making a hospital order⁶ in respect of him before deciding to impose a sentence of imprisonment (the 'relevant sentence') in respect of the offence⁷,

the court may give both of the following directions, namely:

- 1110 (a) a direction that, instead of being removed to and detained in a prison, the offender be removed to and detained in such hospital as may be specified in the direction (a 'hospital direction')⁸; and
- 1111 (b) a direction that the offender be subject to special restrictions⁹ (a 'limitation direction')¹⁰.

A hospital direction and a limitation direction may not be given in relation to an offender unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for his case, or of some other person representing the managers of the hospital, that arrangements have been made for his admission to that hospital¹¹ and for his admission to it within the period of 28 days beginning with the day of the giving of such directions¹²; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety¹³. If within such period of 28 days it appears to the Secretary of State that by reason of an emergency or other special circumstances it is not practicable for the patient to be received into the hospital specified in the hospital direction, he may give instructions for the admission of the patient to such other hospital as appears to be appropriate instead of the hospital so specified¹⁴.

1 Mental Health Act 1983 s 45A(1) (ss 45A, 45B added by the Crime (Sentences) Act 1997 s 46). As to sentences fixed by law see PARA 15.

2 At least one of the registered medical practitioners must have been approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491): see s 54(1) (amended by the Crime (Sentences) Act 1997 Sch 4 para 12(6)). A direction under these provisions may not be given in relation to an offender unless at least one of the medical practitioners whose evidence is taken into account by the court under the Mental Health Act 1983 s 45A(2) has given evidence orally before the court: s 45A(4) (as so added).

3 Mental Health Act 1983 s 45A(1)(a), (2)(a) (as added (see note 1); s 45A(2)(a) amended by the Mental Health Act 2007 Sch 1 paras 1, 9). As to the meaning of 'mental disorder' see PARA 333 note 4.

4 Mental Health Act 1983 s 45A(2)(b) (as added: see note 1).

5 Mental Health Act 1983 s 45A(2)(c) (as added (see note 1); substituted by the Mental Health Act 2007 s 4(1), (6)).

6 See PARA 332.

7 Mental Health Act 1983 s 45A(1)(b) (as added (see note 1); amended by the Criminal Justice Act 2003 Sch 32 paras 37, 39, Sch 37 Pt 7).

8 Mental Health Act 1983 s 45A(3)(a) (as added: see note 1). See note 10.

9 Is subject to the special restrictions set out in the Mental Health Act 1983 s 41 (restriction orders) (see PARA 337).

10 Mental Health Act 1983 s 45A(3)(b) (as added: see note 1). Section 38(1), (5) (see PARA 334) and s 39 (see PARA 332) have effect as if any reference to the making of a hospital order included a reference to the giving of a hospital direction and a limitation direction: s 45A(8) (as so added).

A hospital direction and a limitation direction given in relation to an offender have effect not only as regards the relevant sentence but also (so far as applicable) as regards any other sentence of imprisonment imposed on the same or a previous occasion: s 45A(9) (as so added). A hospital direction and a limitation direction are sufficient authority:

- 408 (1) for a constable or any other person directed to do so by the court to convey the patient to the hospital specified in the hospital direction within a period of 28 days (s 45B(1)(a) (as so added)); and
- 409 (2) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of the Mental Health Act 1983 (s 45B(1)(a) (as so added)).

With respect to any person, a hospital direction has effect as a transfer direction and a limitation direction has effect as a restriction direction: s 45B(2) (as so added). As to transfer directions (ie directions under s 47) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 535. As to restriction directions (ie directions under s 49) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 537.

While a person is subject to a hospital direction and a limitation direction the responsible clinician must at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report must contain such particulars as the Secretary of State may require: s 45B(3) (as so added; amended by the Mental Health Act 2007 s 10(1), (9)). As to the meaning of 'responsible clinician' see PARA 334 note 17.

11 Mental Health Act 1983 s 45A(5)(a) (as added (see note 1); s 45A(5) amended by the Mental Health Act 2007 s 10(1), (8)).

12 Mental Health Act 1983 s 45A(5)(b) (as added and amended: see notes 1, 11).

13 Mental Health Act 1983 s 45A(5) (as added and amended: see notes 1, 11).

14 Mental Health Act 1983 s 45A(6) (as added: see note 1). Where such instructions are given the Secretary of State must cause the person having the custody of the patient to be informed and the hospital direction has effect as if the hospital specified in the instructions were substituted for the hospital specified in the hospital direction: s 45A(7) (as so added).

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339. Power to specify hospital units.

Any power to specify a hospital conferred by the provisions relating to hospital orders¹, to hospital and limitation directions² and to transfer directions³ includes power to specify a hospital unit⁴; and where such a unit is specified in relation to any person in the exercise of such a power, any reference in any enactment⁵ to him being, or being liable to be, detained in a hospital is to be construed accordingly⁶. However, in the case of a hospital order, this provision does not apply unless the court also makes a restriction order⁷; and in the case of a transfer direction, this provision does not apply unless the Secretary of State also gives a restriction direction⁸.

1 Crime (Sentences) Act 1997 s 47(1)(a). As to hospital orders (ie orders under the Mental Health Act 1983 s 37) see PARA 332. A reference in the Crime (Sentences) Act 1997 s 47 (see the text and notes 2-8) to the Mental Health Act 1983 s 37 or s 41 (see PARA 337) includes a reference to that provision as it applies by virtue of:

410 (1) the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA 332) (Crime (Sentences) Act 1997 s 47(4)(a) (s 47(4) substituted by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 45(1), (3)));

411 (2) the Criminal Appeal Act 1968 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1883) or s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1889) (Crime (Sentences) Act 1997 s 47(4)(b) (as so substituted)); or

412 (3) the Armed Forces Act 2006 Sch 4 (see **ARMED FORCES**) (including as applied by the Courts-Martial (Appeals) Act 1968 s 16(2)) (Crime (Sentences) Act 1997 s 47(4)(c) (substituted by the Armed Forces Act 2006 Sch 16 para 143)).

2 Crime (Sentences) Act 1997 s 47(1)(b). As to hospital and limitation directions (ie under the Mental Health Act 1983 s 45A) see PARA 338.

3 Crime (Sentences) Act 1997 s 47(1)(c). As to transfer directions (ie directions under the Mental Health Act 1983 s 47) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 535.

4 Ie any part of a hospital which is treated as a separate unit: Crime (Sentences) Act 1997 s 47(3).

5 Ie including the Crime (Sentences) Act 1997.

6 Crime (Sentences) Act 1997 s 47(1).

7 Crime (Sentences) Act 1997 s 47(2)(a). A 'restriction order' is an order under the Mental Health Act 1983 s 41 (see PARA 337). As to references to s 41 see note 1.

8 Crime (Sentences) Act 1997 s 47(2)(b). A restriction direction is a direction under s 49 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 537).

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340. Victims' rights where offender is under a hospital order with a restriction order.

Where:

- 1112 (1) a patient is charged with a sexual or violent offence¹ and:
- .4
3. (a) the patient is convicted of the offence²; or
 4. (b) a verdict is returned that the patient is not guilty of the offence by reason of insanity³; or
 5. (c) a finding is made that the patient is under a disability⁴, and he did the act or made the omission charged against him as the offence⁵; and
- .5
- 1113 (2) a hospital order⁶ (whether with or without a restriction order⁷) is made in respect of the patient by a court⁸ dealing with him for the offence⁹,

then the local probation board¹⁰ or provider of probation services¹¹ must take all reasonable steps to ascertain whether a person who appears to the board to be the victim of the offence or to act for the victim of the offence wishes to make representations about the conditions of the patient's discharge from hospital¹² or to receive the information about any conditions to which the patient is to be subject in the event of his discharge from hospital¹³. Provision is made in connection with the forwarding of any such representations to specified persons (the identity of whom depends on whether a restriction order has¹⁴ or has not¹⁵ been made), and with the giving of any such information where a restriction order has been made¹⁶. Where a restriction order has not been made, there is provision for the notification of hospital managers of a patient's decisions concerning the making of representations and the receipt of information¹⁷ and of other matters concerning the patient's treatment¹⁸. Provision is also made in connection with the making of representations and the receipt of information where a restriction order ceases to have effect while a hospital order remains in force¹⁹.

1 Domestic Violence, Crime and Victims Act 2004 s 36(1), (2). For the purposes of ss 35-44B an offence is a sexual or violent offence if it is any of these: (1) murder or an offence specified in the Criminal Justice Act 2003 Sch 15 (see PARAS 70-71); (2) an offence in respect of which the patient or offender is subject to the notification requirements of the Sexual Offences Act 2003 Pt 2 (ss 80-136) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 244 et seq); (3) an offence against a child within the meaning of the Criminal Justice and Courts Services Act 2000 Pt 2 (ss 26-42) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663 et seq); Domestic Violence, Crime and Victims Act 2004 s 45(2) (amended by the Mental Health Act 2007 Sch 6 paras 1, 16).

2 Domestic Violence, Crime and Victims Act 2004 s 36(2)(a).

3 Domestic Violence, Crime and Victims Act 2004 s 36(2)(b). As to such verdicts see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

4 Ie under the Criminal Procedure (Insanity) Act 1964 s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265); Domestic Violence, Crime and Victims Act 2004 s 36(2)(c)(i).

5 Ie under the Criminal Procedure (Insanity) Act 1964 s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265); Domestic Violence, Crime and Victims Act 2004 s 36(2)(c)(ii).

6 'Hospital order' has the meaning given by the Mental Health Act 1983 s 37(4) (see PARA 332): Domestic Violence, Crime and Victims Act 2004 s 45(1).

7 'Restriction order' has the meaning given by the Mental Health Act 1983 s 41(1) (see PARA 337): Domestic Violence, Crime and Victims Act 2004 s 45(1).

8 'Court' does not include the Court Martial or the Court Martial Appeal Court: Domestic Violence, Crime and Victims Act 2004 s 45(1) (amended by the Armed Forces Act 2006 Sch 16 para 239).

9 Domestic Violence, Crime and Victims Act 2004 s 36(3) (amended by the Mental Health Act 2007 Sch 6 para 2).

10 le the local probation board for the area in which the determination mentioned in the Domestic Violence, Crime and Victims Act 2004 s 36(2)(a), (b) or (c) (see the text and notes 1-5) is made: s 36(4) (amended by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq.

11 le the provider of probation services operating in the local justice area in which the determination mentioned in the Domestic Violence, Crime and Victims Act 2004 s 36(2)(a), (b) or (c) (see the text and notes 1-5) is made: s 36(4) (amended by SI 2008/912). See note 10. The provider of probation services mentioned in the Domestic Violence, Crime and Victims Act 2004 s 36(4) is the provider of probation services identified as such by arrangements under the Offender Management Act 2007 s 3 (see PARA 741): Domestic Violence, Crime and Victims Act 2004 s 36(4A) (added by SI 2008/912).

12 Domestic Violence, Crime and Victims Act 2004 s 36(4)(a). The representations which may be so made are about whether the patient should be subject to any conditions in the event of his discharge from hospital while a restriction order is in force in respect of him (s 36(5)(a) (s 36(5)(a) amended, s 36(5)(c) added, by the Mental Health Act 2007 Sch 6 paras 1, 2)), if so, what conditions (s 36(5)(b)) and what conditions he should be subject to in the event of his discharge from hospital under a community treatment order (s 36(5)(c) (as so added)). As to the meaning of 'community treatment order' see the Mental Health Act 1983 s 17A; and **MENTAL HEALTH** (definition applied by the Domestic Violence, Crime and Victims Act 2004 s 45(1) (amended by the Mental Health Act 2007 Sch 6 para 16)).

13 Domestic Violence, Crime and Victims Act 2004 s 36(4)(b), (6).

14 If in a case where the Domestic Violence, Crime and Victims Act 2004 s 36 applies the hospital order in respect of the patient was made with a restriction order, a person makes representations about a matter specified in s 36(5) to the local probation board or provider of probation services mentioned in s 36(4) or the relevant probation body, and it appears to the relevant probation body that the person is the victim of the offence or acts for the victim of the offence, the relevant probation body must (provided the restriction order made in respect of the patient is in force) forward the representations to the persons responsible for determining the matter: s 37(1)-(3) (s 37(1) amended by the Mental Health Act 2007 Sch 6 para 4; Domestic Violence, Crime and Victims Act 2004 s 37(2), (4)-(7) amended, s 37(8) substituted, by SI 2008/912).

For this purpose the 'relevant probation body' is:

413 (1) in a case where the patient is to be discharged subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board (Domestic Violence, Crime and Victims Act 2004 s 37(8)(a) (as so substituted));

414 (2) in a case where the patient is to be discharged subject to a condition that he reside in a particular area other than one mentioned in s 37(8)(a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3 (Domestic Violence, Crime and Victims Act 2004 s 37(8)(b) (as so substituted)); and

415 (3) in any other case, if the hospital in which the patient is detained is situated in the area of a local probation board, that area, and if that hospital is not so situated, the provider of probation services operating in the local justice area in which the hospital in which the patient is detained is situated that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3 (Domestic Violence, Crime and Victims Act 2004 s 37(8)(c) (as so substituted)).

A reference in ss 35-44B to a place in which a person is detained includes a reference to a place in which he is liable to be detained under the Mental Health Act 1983: Domestic Violence, Crime and Victims Act 2004 s 45(3) (added by the Mental Health Act 2007 Sch 6 para 16).

In such a case the Secretary of State must inform the relevant probation body if he is considering:

- 416 (a) whether to give a direction in respect of the patient under the Mental Health Act 1983 s 42(1) (directions lifting restrictions: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 501) (Domestic Violence, Crime and Victims Act 2004 s 37(4)(a) (as so amended)),
- 417 (b) whether to discharge the patient under the Mental Health Act 1983 s 42(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 501), either absolutely or subject to conditions (Domestic Violence, Crime and Victims Act 2004 s 37(4)(b) (as so amended)); or
- 418 (c) if the patient has been discharged subject to conditions, whether to vary the conditions (s 37(4)(c) (as so amended)),

and the First-tier Tribunal or the Mental Health Review Tribunal for Wales must inform the relevant probation body if:

- 419 (i) an application is made to the tribunal by the patient under the Mental Health Act 1983 s 69, 70 or 75 (applications concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 37(5)(a) (as so amended; further amended by SI 2008/2833)); or
- 420 (ii) the Secretary of State refers the patient's case to the tribunal under the Mental Health Act 1983 s 71 (references concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 37(5)(b) (as so amended)).

If the relevant probation body receives information under s 37(4) or (5) and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 36(4), expressed a wish to make representations about a matter specified in s 36(5), or has made representations about such a matter to the relevant probation body or the local probation board or provider of probation services mentioned in s 36(4), the relevant probation body must provide the information to the person: Domestic Violence, Crime and Victims Act 2004 s 37(6), (7) (as so amended)).

15 If, in a case where the Domestic Violence, Crime and Victims Act 2004 s 36 applies, the hospital order in respect of the patient was made without a restriction order and:

- 421 (1) a person makes representations about a matter specified in s 36(5) to the managers of the relevant hospital (s 37A(1), (2)(a) (ss 36A, 37A, 38A, 38B added by the Mental Health Act 2007 Sch 6 paras 3, 5, 7)); and
- 422 (2) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence (Domestic Violence, Crime and Victims Act 2004 s 37A(2)(b) (as so added)),

the managers must forward the representations to the persons responsible for determining the matter (s 37A(3) (as so added)). For this purpose the relevant hospital is the hospital in which the patient is detained, or, if a community treatment order is in force in respect of the patient, the responsible hospital: ss 36A(6), 37A(9), 38A(8), 38B(5) (as so added). As to the meaning of 'managers' see the Mental Health Act 1983 s 145; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 439 (definition applied by the Domestic Violence, Crime and Victims Act 2004 s 45(1) (amended by the Mental Health Act 2007 Sch 6 para 16)). As to the meaning of 'responsible hospital' see the Mental Health Act 1983 s 17A; and **MENTAL HEALTH** (definition applied by the Domestic Violence, Crime and Victims Act 2004 s 45(1) (amended by the Mental Health Act 2007 Sch 6 para 16)).

In such a case the responsible clinician must inform the managers of the relevant hospital if he is considering making:

- 423 (a) an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 454) (Domestic Violence, Crime and Victims Act 2004 s 37A(4)(a) (as so added));
- 424 (b) a community treatment order in respect of the patient (s 37A(4)(b) (as so added)); or
- 425 (c) an order under the Mental Health Act 1983 s 17B(4) (see **MENTAL HEALTH**) to vary the conditions specified in a community treatment order in force in respect of the patient (Domestic Violence, Crime and Victims Act 2004 s 37A(4)(c) (as so added)).

As to the meaning of 'responsible clinician' see PARA 334 note 17. Any person who has the power to make an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(3) must inform the managers of the relevant hospital if he is considering making that order: Domestic Violence, Crime and Victims Act 2004 s 37A(5) (as so added). The First-tier Tribunal or the Mental Health Review Tribunal for Wales must inform the managers of the relevant hospital if an application is made to the tribunal under the Mental Health Act 1983 s 66 or s 69 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) or the patient's case is referred to the tribunal under s 67 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 566, 568): Domestic Violence, Crime and Victims Act 2004 s 37A(6) (as so added; amended by SI 2008/2833).

If the managers of the relevant hospital receive information under the Domestic Violence, Crime and Victims Act 2004 s 37A (4), (5) or (6) and a person who appears to the managers to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 36(4) expressed a wish to make representations about a matter specified in s 36(5), or has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained, the managers of the relevant hospital must provide the information to the person: s 37A(7), (8) (as so added).

16 If the Domestic Violence, Crime and Victims Act 2004 s 36 applies and a restriction order has been made, a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 36(4) expressed a wish to receive the information specified in s 36(6), or has subsequently informed the relevant probation body that he wishes to receive that information, then the relevant probation body must, provided the restriction order is in force, take all reasonable steps:

- 426 (1) to inform that person whether or not the patient is to be subject to any conditions in the event of his discharge (Domestic Violence, Crime and Victims Act 2004 s 38(1), (2), (3)(a), (8) (s 38(1) amended by the Mental Health Act 2007 Sch 6 paras 1, 6; Domestic Violence, Crime and Victims Act 2004 s 38(3), (4), (6), (7), (9) amended by SI 2008/912));
- 427 (2) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family (Domestic Violence, Crime and Victims Act 2004 s 38(3)(b) (as so amended));
- 428 (3) if the restriction order in respect of the patient is to cease to have effect, to notify that person of the date on which it is to cease to have effect (s 38(3)(c) (as so amended)); and
- 429 (4) to provide that person with such other information as the board or the body considers appropriate in all the circumstances of the case (s 38(3)(d) (as so amended)).

As to the meaning of 'relevant probation body' see note 14 (definition applied by s 38(9) (as so amended)).

The Secretary of State must inform the relevant probation body whether the patient is to be discharged (s 38(4) (a) (as so amended)), and if he is, whether he is to be discharged absolutely or subject to conditions (s 38(4)(b) (as so amended)) (and if he is to be discharged subject to conditions, then the Secretary of State must inform the relevant probation body what the conditions are to be (s 38(4)(c) (as so amended))), and if he has been discharged subject to conditions the Secretary of State must inform the relevant probation body of any variation of the conditions by him and of any recall to hospital under the Mental Health Act 1983 s 42(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 501, 524) (Domestic Violence, Crime and Victims Act 2004 s 38(4)(d) (as so amended)). If the restriction order is to cease to have effect by virtue of action to be taken by the Secretary of State, he must inform the relevant probation body of the date on which the restriction order is to cease to have effect: s 38(4)(e) (as so amended).

If an application is made to the First-tier Tribunal or the Mental Health Review Tribunal for Wales by the patient under the Mental Health Act 1983 s 69, 70 or 75 (applications concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) or the Secretary of State refers the patient's case to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under s 71 (references concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564), then, instead of the Domestic Violence, Crime and Victims Act 2004 s 38(4) applying, the tribunal must inform the relevant probation body of the matters specified in s 38(4)(a)-(c); and where the patient has been discharged subject to conditions, the tribunal must also inform the relevant probation body of any variation of the conditions by the tribunal: s 38(5), (6)(a), (b) (as so amended; s 38(5) further amended by SI 2008/2833). If the restriction order is to cease to have effect by virtue of action to be taken by the tribunal, the tribunal must inform the relevant probation body of the date on which the restriction order is to cease to have effect: Domestic Violence, Crime and Victims Act 2004 s 38(6)(c). If the patient has been discharged subject to conditions the Secretary of State must inform the relevant probation body of the matters specified in s 38(4)(d), (e): s 38(7) (as so amended). These duties to provide information apply only while the restriction order is in force: s 38(8).

17 If, in a case where the Domestic Violence, Crime and Victims Act 2004 s 36 applies, the hospital order in respect of the patient was made without a restriction order and a person who appears to the local probation board or provider of probation services mentioned in the Domestic Violence, Crime and Victims Act 2004 s 36(4) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under s 36(4), expresses a wish to make representations about a matter specified in s 36(5) (s 36A(1), (2)(a) (s 36A as added (see note 15); s 36A(2)-(5) amended by SI 2008/912)) or to receive the information specified in the Domestic Violence, Crime and Victims Act 2004 s 36(6) (s 36A(2)(b) (as so added and amended)), the local probation board or the provider of probation services must notify the managers of the hospital in which the patient is detained of that person's wish and of that person's name and address (s 36A(3)(a) (as so added and amended)) and notify that person of the name and address of the hospital (s 36A(3)(b) (as so added and amended)). If in such a case a person who appears to the local probation board or provider of probation services mentioned in s 36(4) to be the victim of the offence or to act for the victim of the offence,

subsequently to his wishes being ascertained under s 36(4), expresses a wish to do something specified in s 36A(2)(a) or (b) the local probation board or provider of probation services mentioned in s 36(4) must take all reasonable steps to ascertain whether the hospital order made in respect of the patient continues in force and whether a community treatment order is in force in respect of him (s 36A(4), (5)(a) (as so added and amended)) and, if the board or provider ascertains that the hospital order does continue in force, to notify the managers of the relevant hospital of that person's wish and to notify that person of the name and address of the hospital (s 36A(5)(b) (as so added and amended)). As to the relevant hospital see note 15.

18 If, in a case where the Domestic Violence, Crime and Victims Act 2004 s 36 applies, the hospital order in respect of the patient was made without a restriction order, the responsible clinician must inform the managers of the relevant hospital:

- 430 (1) whether he is to make an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 454) (Domestic Violence, Crime and Victims Act 2004 s 38A(1), (2)(a) (s 38A added by the Mental Health Act 29097 Sch 6 para 7));
- 431 (2) whether he is to make a community treatment order in respect of the patient (Domestic Violence, Crime and Victims Act 2004 s 38A(2)(b) (as so added));
- 432 (3) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order (s 38A(2)(c) (as so added));
- 433 (4) if a community treatment order is in force in respect of the patient, of any variation to be made under the Mental Health Act 1983 s 17B(4) (see **MENTAL HEALTH**) of the conditions specified in the order (Domestic Violence, Crime and Victims Act 2004 s 38A(2)(d) (as so added));
- 434 (5) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force (s 38A(2)(e) (as so added));
- 435 (6) if, following the examination of the patient under the Mental Health Act 1983 s 20 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 461, 520), it does not appear to the responsible clinician that the conditions set out in s 20(4) are satisfied, of the date on which the authority for the patient's detention is to expire (Domestic Violence, Crime and Victims Act 2004 s 38A(2)(f) (as so added)).

Any person who has the power to make an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 454) must inform the managers of the relevant hospital if he is to make that order: Domestic Violence, Crime and Victims Act 2004 s 38A(3) (as so added).

If in such a case:

- 436 (a) an application is made to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under the Mental Health Act 1983 s 66 or 69 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 38A(4)(a) (as so added; s 36A(4) amended by SI 2008/2833));
- 437 (b) the patient's case is referred to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under the Mental Health Act 1983 s 67 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 566, 568) (Domestic Violence, Crime and Victims Act 2004 s 38A(4)(b) (as so added and amended)); or
- 438 (c) the managers of the relevant hospital refer the patient's case to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under the Mental Health Act 1983 s 68 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 567) (Domestic Violence, Crime and Victims Act 2004 s 38A(4)(c) (as so added and amended)),

the tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged (s 38A(5) (as so added)).

If a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 36(4), expressed a wish to receive the information specified in s 36(6), or has subsequently informed the managers of the relevant hospital that he wishes to receive that information, the managers of the relevant hospital order must take all reasonable steps:

- 439 (i) to inform that person whether the patient is to be discharged under the Mental Health Act 1983 s 23 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 523) or s 72 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 573-574) (Domestic Violence, Crime and Victims Act 2004 s 38A(6), (7)(a) (as so added));

- 440 (ii) to inform that person whether a community treatment order is to be made in respect of the patient (s 38A(7)(b) (as so added));
- 441 (iii) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions (s 38A(7)(c) (as so added));
- 442 (iv) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under the Mental Health Act 1983 s 17B(4) (see **MENTAL HEALTH**), to provide that person with details of any variation which relates to contact with the victim or his family (Domestic Violence, Crime and Victims Act 2004 s 38A(7)(d) (as so added));
- 443 (v) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force (s 38A(7)(e) (as so added));
- 444 (vi) if, following the examination of the patient under the Mental Health Act 1983 s 20 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 461, 520), the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire (Domestic Violence, Crime and Victims Act 2004 s 38A(7)(f) (as so added)); and
- 445 (vii) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case (s 38A(7)(g) (as so added)).

19 If in a case where the Domestic Violence, Crime and Victims Act 2004 s 36 applies the hospital order in respect of the patient was made with a restriction order and the restriction order ceases to have effect while the hospital order continues in force (Domestic Violence, Crime and Victims Act 2004 s 38B(1) (s 38B added by the Mental Health Act 2007 Sch 6 para 7)), and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 36(4), expressed a wish to make representations about a matter specified in s 36(5) or to receive the information specified in s 36(6), or has subsequently informed the relevant probation body that he wishes to make representations about such a matter or to receive that information (Domestic Violence, Crime and Victims Act 2004 s 38B(2) (as so added; s 38B(2), (3), (6) amended by SI 2008/912)), the relevant probation body must take all reasonable steps to notify the managers of the relevant hospital of an address at which that person may be contacted and to notify that person of the name and address of the hospital (Domestic Violence, Crime and Victims Act 2004 s 38B(3) (as so added and amended)). As to the meaning of 'relevant probation body' see note 14 (definition applied by s 38B(6) (as so added and amended)). While the hospital order continues in force, the patient is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and ss 37A, 38A (see notes 15, 18) are to apply in relation to him accordingly: s 38B(4) (as so added).

UPDATE

340 Victims' rights where offender is under a hospital order with a restriction order

NOTE 1--For '**CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 244 et seq' read 'PARA 558 et seq'.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(vi) Hospital and Guardianship Orders/341. Victims' rights where offender is under a hospital direction and a limitation direction.

341. Victims' rights where offender is under a hospital direction and a limitation direction.

If a person (the 'offender') is convicted of a sexual or violent offence¹, a relevant sentence² is imposed on him in respect of the offence, and a hospital direction³ and a limitation direction⁴ are given in relation to him by a court⁵ dealing with him for the offence⁶, then the local probation board⁷ or provider of probation services⁸ must take all reasonable steps to ascertain whether a person who appears to the board or the provider to be the victim of the offence or to act for the victim of the offence wishes⁹ to make representations about the conditions of the patient's discharge from hospital¹⁰ or to receive information about any conditions to which the patient is to be subject in the event of his discharge from hospital¹¹. Provision is made in connection with the forwarding of any such representations to specified persons¹², with the giving of any such information¹³, and in connection with the making of representations and the receipt of information where a limitation direction ceases to have effect while an offender is treated as a patient in respect of whom a hospital order has effect¹⁴.

¹ As to sexual or violent offences see PARA 340 note 1.

² 'Relevant sentence' means any of these: (1) a sentence of imprisonment for a term of 12 months or more; (2) a sentence of detention during Her Majesty's pleasure; (3) a sentence of detention for a period of 12 months or more under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (offenders under 18 convicted of certain serious offences: see PARA 78); (4) a detention and training order for a term of 12 months or more: Domestic Violence, Crime and Victims Act 2004 s 45(1).

³ 'Hospital direction' has the meaning given by the Mental Health Act 1983 s 45A(3)(a) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 490): Domestic Violence, Crime and Victims Act 2004 s 45(1).

⁴ 'Limitation direction' has the meaning given by the Mental Health Act 1983 s 45A(3)(b) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 490): Domestic Violence, Crime and Victims Act 2004 s 45(1).

⁵ As to the meaning of 'court' see PARA 340 note 8.

⁶ Domestic Violence, Crime and Victims Act 2004 s 39(1).

⁷ I.e. the local probation board for the area in which the hospital direction mentioned in the Domestic Violence, Crime and Victims Act 2004 s 39(1) (see the text and notes 1-6) is given: s 39(2) (amended by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq.

⁸ I.e. the provider of probation services operating in the local justice area in which the hospital direction mentioned in the Domestic Violence, Crime and Victims Act 2004 s 39(1) (see the text and notes 1-6) is given: s 39(2) (amended by SI 2008/912). The provider of probation services mentioned in the Domestic Violence, Crime and Victims Act 2004 s 39(2) is the provider of probation services identified as such by arrangements under the Offender Management Act 2007 s 3 (see PARA 741): Domestic Violence, Crime and Victims Act 2004 s 39(2A) (added by SI 2008/912).

⁹ Domestic Violence, Crime and Victims Act 2004 s 39(2).

¹⁰ Domestic Violence, Crime and Victims Act 2004 s 39(2)(a). The representations which may be made are representations about:

446 (1) whether the offender should, in the event of his discharge from hospital while he is subject to a limitation direction, be subject to any conditions and, if so, what conditions (s 39(3)(a) (s 39(3)(a) amended, s 39(3)(aa) added, by the Mental Health Act 2007 Sch 6 paras 1, 8));

- 447 (2) what conditions he should be subject to in the event of his discharge from hospital under a community treatment order (Domestic Violence, Crime and Victims Act 2004 s 39(3)(aa) (as so added));
- 448 (3) whether the offender should, in the event of his release from hospital, be subject to any licence conditions or supervision requirements and, if so, what licence conditions or supervision requirements (s 39(3)(b));
- 449 (4) if the offender is transferred to a prison or other institution in which he might have been detained if he had not been removed to hospital, whether he should, in the event of his release from prison or another such institution, be subject to any licence conditions or supervision requirements and, if so, what licence conditions or supervision requirements (s 39(3)(c)).

As to the meaning of 'community treatment order' see PARA 340 note 12. 'Licence condition' means a condition in a licence; and 'supervision requirements' means requirements specified in a notice under the Powers of Criminal Courts (Sentencing) Act 2000 s 103(6) (see PARA 92): Domestic Violence, Crime and Victims Act 2004 s 45(1).

11 Domestic Violence, Crime and Victims Act 2004 s 39(2)(b). The specified information for this purpose is any information about any conditions to which the offender is to be subject in the event of his discharge (s 39(4)(a)) and information about any licence conditions or supervision requirements to which the offender is to be subject in the event of his release (s 39(4)(b)).

12 If in a case where the Domestic Violence, Crime and Victims Act 2004 s 39 applies, a person makes representations about a matter specified in s 39(5) to the local probation board or provider of probation services mentioned in s 39(2) or the relevant probation body, and it appears to the relevant probation body that the person is the victim of the offence or acts for the victim of the offence, the relevant probation body must (provided, if the representations are about a matter specified in s 39(3)(a), the limitation direction given in relation to the offender is in force) forward the representations to the persons responsible for determining the matter: s 40(1)-(3) (s 40(2), (4), (6), (7) amended, s 40(8) substituted, by SI 2008/912).

For this purpose the 'relevant probation body' is:

- 450 (1) in a case where the offender is to be discharged from hospital subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board (Domestic Violence, Crime and Victims Act 2004 s 40(8)(a) (as so substituted));
- 451 (2) in a case where the offender is to be discharged subject to a condition that he reside in a particular area other than one mentioned in s 40(8)(a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3 (see PARA 741) (Domestic Violence, Crime and Victims Act 2004 s 40(8)(b) (as so substituted));
- 452 (3) in a case where the offender is to be supervised on release by an officer of a local probation board or an officer of a provider of probation services, that local probation board or that provider of probation services (as the case may be) (s 40(8)(c) (as so substituted)); and
- 453 (4) in any other case, if the hospital, prison or other place in which the offender is detained is situated in the area of a local probation board, that area, and if that hospital, prison or other place is not so situated, the provider of probation services operating in the local justice area in which the hospital, prison or other place in which the patient is detained is situated that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3 (Domestic Violence, Crime and Victims Act 2004 s 40(8)(d) (as so substituted)).

As to a place in which a person is detained see PARA 340 note 14.

In such a case the Secretary of State must inform the relevant probation body if he is considering:

- 454 (a) whether to give a direction in respect of the offender under the Mental Health Act 1983 s 42(1) (directions lifting restrictions: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 501) (Domestic Violence, Crime and Victims Act 2004 s 40(4)(a) (as so amended));
- 455 (b) whether to discharge the offender under the Mental Health Act 1983 s 42(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 501), either absolutely or subject to conditions (Domestic Violence, Crime and Victims Act 2004 s 40(4)(b) (as so amended)); or
- 456 (c) if the offender has been discharged subject to conditions, whether to vary the conditions (s 40(4)(c) (as so amended)),

and the First-tier Tribunal or the Mental Health Review Tribunal for Wales must inform the relevant probation body if:

- 457 (i) an application is made to the tribunal by the offender under the Mental Health Act 1983 s 69, 70 or 75 (applications concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 40(5)(a) (as so amended; further amended by SI 2008/2833)); or
- 458 (ii) the Secretary of State refers the offender's case to the tribunal under the Mental Health Act 1983 s 71 (references concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 40(5)(b) (as so amended)).

If the relevant probation body receives information under s 40(4) or (5) and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 39(2), expressed a wish to make representations about a matter specified in s 39(3) (a), or has made representations about such a matter to the relevant probation body or the local probation board or provider of probation services mentioned in s 39(2), the relevant probation body must provide the information to the person: s 40(6), (7) (as so amended).

13 If the Domestic Violence, Crime and Victims Act 2004 s 39 applies and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 39(2) expressed a wish to receive the information specified in s 39(4), or has subsequently informed the relevant probation body that he wishes to receive that information, then the relevant probation body must, provided the limitation direction is in force, take all reasonable steps:

- 459 (1) to inform that person whether or not the offender is to be subject to any conditions in the event of his discharge (Domestic Violence, Crime and Victims Act 2004 s 41(1), (2), (3)(a), (8) (s 41(2)-(4), (6), (7), (9) amended by SI 2008/912));
- 460 (2) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family (Domestic Violence, Crime and Victims Act 2004 s 41(3)(b) (as so amended));
- 461 (3) if the limitation direction in respect of the offender is to cease to have effect, to notify that person of the date on which it is to cease to have effect (s 41(3)(c) (as so amended));
- 462 (4) to inform that person whether or not the offender is to be subject to any licence conditions or supervision requirements in the event of his release (s 41(3)(d) (as so amended));
- 463 (5) if he is, to provide that person with details of any licence conditions or supervision requirements which relate to contact with the victim or his family (s 41(3)(e) (as so amended)); and
- 464 (6) to provide that person with such other information as the board considers appropriate in all the circumstances of the case (s 41(3)(f) (as so amended)).

As to the meaning of 'relevant probation body' see note 12 (definition applied by s 41(9) (as so amended)).

The Secretary of State must inform the relevant probation body whether the patient is to be discharged (s 41(4) (a) (as so amended)), and if he is, whether he is to be discharged absolutely or subject to conditions (s 41(4)(b) (as so amended)) (and if he is to be discharged subject to conditions, then the Secretary of State must inform the relevant probation body what the conditions are to be (s 41(4)(c) (as so amended))), and if he has been discharged subject to conditions the Secretary of State must inform the relevant probation body of any variation of the conditions by him and of any recall to hospital under the Mental Health Act 1983 s 42(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 501, 524) (Domestic Violence, Crime and Victims Act 2004 s 41(4)(d) (as so amended)). If the limitation direction is to cease to have effect by virtue of action to be taken by the Secretary of State, he must inform the relevant probation body of the date on which the limitation direction is to cease to have effect: s 41(4)(e) (as so amended).

If an application is made to the First-tier Tribunal or the Mental Health Review Tribunal for Wales by the patient under the Mental Health Act 1983 s 69, 70 or 75 (applications concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) or the Secretary of State refers the offender's case to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under s 71 (references concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564), then, instead of the Domestic Violence, Crime and Victims Act 2004 s 41(4) applying, the tribunal must inform the relevant probation body of the matters specified in s 41(4)(a)-(c); and where the offender has been discharged subject to conditions, the tribunal must also inform the relevant probation body of any variation of the conditions by the tribunal: s 41(5), (6)(a), (b) (as so amended; s 41(5) further amended by SI 2008/2833). If the limitation direction is to cease to have effect by virtue of action to be taken by the tribunal, the tribunal must inform the relevant probation body of the date on which the limitation direction is to cease to have effect: Domestic Violence, Crime and Victims Act 2004 s 41(6)

(c). If the offender has been discharged subject to conditions the Secretary of State must inform the relevant probation body of the matters specified in s 41(4)(d), (e): s 41(7) (as so amended). These duties to provide information apply only while the limitation direction is in force: s 41(8).

14 If in a case where the Domestic Violence, Crime and Victims Act 2004 s 39 applies the limitation direction in respect of the offender ceases to be in force and he is treated for the purposes of the Mental Health Act 1983 as a patient in respect of whom a hospital order has effect (Domestic Violence, Crime and Victims Act 2004 s 41A(1) (s 41A added by the Mental Health Act 2007 Sch 6 para 9)), and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 39(2), expressed a wish to make representations about a matter specified in s 39(3) or to receive the information specified in s 39(4), or has subsequently informed the relevant probation body that he wishes to make representations about such a matter or to receive that information (Domestic Violence, Crime and Victims Act 2004 s 41A(2) (as so added; s 41A(2), (3), (6) amended by SI 2008/912)), the relevant probation body must take all reasonable steps to notify the managers of the relevant hospital of an address at which that person may be contacted and to notify that person of the name and address of the hospital (Domestic Violence, Crime and Victims Act 2004 s 41A(3) (as so added and amended)). As to the meaning of 'relevant probation body' see note 12 (definition applied by s 41A(6) (as so added and amended)). As to the meaning of 'relevant hospital' see s 36A(6); and PARA 340 note 15 (definition applied by s 41A(5) (as so added and amended)). As to the managers see PARA 340 note 15. The offender is to be regarded as a patient in respect of whom a hospital order was made without a restriction order; and ss 37A, 38A (see PARA 340 notes 15, 18) are to apply in relation to him accordingly: s 41A(4) (as so added).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(vi) Hospital and Guardianship Orders/342. Victims' rights where offender is under a transfer direction.

342. Victims' rights where offender is under a transfer direction.

If a person (the 'offender') is convicted of a sexual or violent offence¹, a relevant sentence² is imposed on him in respect of the offence, and while the offender is serving the sentence the Secretary of State gives a transfer direction³ in respect of the offender (whether or not he also gives a restriction direction⁴ in respect of the offender)⁵, then the local probation board⁶ or provider of probation services⁷ must take all reasonable steps to ascertain whether a person who appears to the board or the provider to be the victim of the offence or to act for the victim of the offence wishes⁸ to make representations about the conditions of the offender's discharge from hospital⁹ or to receive information about any conditions to which the offender is to be subject in the event of his discharge from hospital¹⁰. Provision is made in connection with the forwarding of any such representations to specified persons (the identity of whom depends on whether a restriction direction has¹¹ or has not¹² been given), and with the giving of any such information where a restriction direction has been made¹³. Where a restriction direction has not been given, there is provision for the notification of hospital managers of a patient's decisions concerning the making of representations and the receipt of information¹⁴ and of other matters concerning the patient's treatment¹⁵. Provision is also made in connection with the making of representations and the receipt of information where a restriction direction ceases to have effect while the transfer direction with which it was given continues in force¹⁶.

1 As to sexual or violent offences see PARA 340 note 1.

2 As to the 'relevant sentence' see PARA 341 note 2.

3 As to transfer directions (ie directions under the Mental Health Act 1983 s 47) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 535 (definition applied by the Domestic Violence, Crime and Victims Act 2004 s 45(1)).

4 As to restriction directions (ie directions under the Mental Health Act 1983 s 49) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 537 (definition applied by the Domestic Violence, Crime and Victims Act 2004 s 45(1)).

5 Domestic Violence, Crime and Victims Act 2004 s 42(1) (s 42(1), (3)(a) amended, s 42(2), (3)(c) added, by the Mental Health Act 2007 Sch 6 paras 1, 10).

6 Ie the local probation board for the area in which the hospital specified in the transfer direction mentioned in the Domestic Violence, Crime and Victims Act 2004 s 42(1) (see the text and notes 1-5) is situated: s 42(2) (s 42(2) amended, s 42(2A) added, by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq.

7 Ie the provider of probation services operating in the local justice area in which the hospital specified in the transfer direction mentioned in the Domestic Violence, Crime and Victims Act 2004 s 42(1) (see the text and notes 1-5) is situated: s 42(2) (as amended: see note 6). The provider of probation services mentioned in the Domestic Violence, Crime and Victims Act 2004 s 42(2) is the provider of probation services identified as such by arrangements under the Offender Management Act 2007 s 3 (see PARA 741): Domestic Violence, Crime and Victims Act 2004 s 42(2A) (as so added).

8 Domestic Violence, Crime and Victims Act 2004 s 42(2) (as amended: see note 6).

9 Domestic Violence, Crime and Victims Act 2004 s 42(2)(a) (as amended: see note 6). The representations which may be made are representations about whether the offender should be subject to any conditions in the event of his discharge from hospital at a time when a restriction direction is in force in respect of him, if so, what conditions, and what conditions he should be subject to in the event of his discharge from hospital under a community treatment order: s 42(3)(a)-(c) (as amended and added: see note 5). As to the meaning of 'community treatment order' see PARA 340 note 12.

10 Domestic Violence, Crime and Victims Act 2004 s 42(2)(b), (4).

11 If in a case where the Domestic Violence, Crime and Victims Act 2004 s 42 applies the transfer direction in respect of the patient was given with a restriction direction, a person makes representations about a matter specified in s 42(3) to the local probation board or provider of probation services mentioned in s 42(2) or the relevant probation body, and it appears to the relevant probation body that the person is the victim of the offence or acts for the victim of the offence, the relevant probation body must (provided the restriction direction given in respect of the offender is in force) forward the representations to the persons responsible for determining the matter: s 43(1)-(3) (s 43(1) amended by the Mental Health Act 2007 Sch 6 para 12; Domestic Violence, Crime and Victims Act 2004 s 43(2), (4)-(7) amended, s 43(8) substituted, by SI 2008/912).

For this purpose the 'relevant probation body' is:

- 465 (1) in a case where the offender is to be discharged subject to a condition that he reside in a particular area, which is or is part of the area of a local probation board, that local probation board (Domestic Violence, Crime and Victims Act 2004 s 43(8)(a) (as so substituted));
- 466 (2) in a case where the offender is to be discharged subject to a condition that he reside in a particular area other than one mentioned in s 43(8)(a), the provider of probation services operating in that area that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3 (see PARA 741) (Domestic Violence, Crime and Victims Act 2004 s 43(8)(b) (as so substituted)); and
- 467 (3) in any other case, if the hospital in which the offender is detained is situated in the area of a local probation board, that area, and if that hospital is not so situated, the provider of probation services operating in the local justice area in which the hospital in which the offender is detained is situated that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3 (Domestic Violence, Crime and Victims Act 2004 s 43(8) (c) (as so substituted)).

As to a place in which a person is detained see PARA 340 note 14.

In such a case the Secretary of State must inform the relevant probation body if he is considering:

- 468 (a) whether to give a direction in respect of the offender under the Mental Health Act 1983 s 42(1) (directions lifting restrictions: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 501) (Domestic Violence, Crime and Victims Act 2004 s 43(4)(a) (as so amended));
- 469 (b) whether to discharge the offender under the Mental Health Act 1983 s 42(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 501), either absolutely or subject to conditions (Domestic Violence, Crime and Victims Act 2004 s 43(4)(b) (as so amended)); or
- 470 (c) if the offender has been discharged subject to conditions, whether to vary the conditions (s 43(4)(c) (as so amended)),

and the First-tier Tribunal or the Mental Health Review Tribunal for Wales must inform the relevant probation body if:

- 471 (i) an application is made to the tribunal by the offender under the Mental Health Act 1983 s 69, 70 or 75 (applications concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 43(5)(a) (as so amended; further amended by SI 2008/2833)); or
- 472 (ii) the Secretary of State refers the offender's case to the tribunal under the Mental Health Act 1983 s 71 (references concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 43(5)(b) (as so amended)).

If the relevant probation body receives information under s 43(4) or (5) and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 42(2), expressed a wish to make representations about a matter specified in s 42(3), or has made representations about such a matter to the relevant probation body or the local probation board or provider of probation services mentioned in s 42(2), the relevant probation body must provide the information to the person: Domestic Violence, Crime and Victims Act 2004 s 43(6), (7) (as so amended).

12 If, in a case where the Domestic Violence, Crime and Victims Act 2004 s 42 applies, the transfer direction in respect of the patient was made without a restriction direction and:

473 (1) a person makes representations about a matter specified in s 42(3) to the managers of the relevant hospital (s 43A(1), (2)(a) (s 43A added by the Mental Health Act 2007 Sch 6 para 13)); and

474 (2) it appears to the managers that the person is the victim of the offence or acts for the victim of the offence (Domestic Violence, Crime and Victims Act 2004 s 43A(2)(b) (as so added)),

the managers must forward the representations to the persons responsible for determining the matter (s 43A(3) (as so added)). As to the meaning of 'relevant probation body' see note 11 (definition applied by s 43A(9) (as so amended)).

As to the meaning of 'managers' see the Mental Health Act 1983 s 145; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 439 (definition applied by the Domestic Violence, Crime and Victims Act 2004 s 45(1) (amended by the Mental Health Act 2007 Sch 6 para 16)).

In such a case the responsible clinician must inform the managers of the relevant hospital if he is considering making:

475 (a) an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 454) (Domestic Violence, Crime and Victims Act 2004 s 43A(4)(a) (as so added));

476 (b) a community treatment order in respect of the patient (s 43A(4)(b) (as so added)); or

477 (c) an order under the Mental Health Act 1983 s 17B(4) (see **MENTAL HEALTH**) to vary the conditions specified in a community treatment order in force in respect of the patient (Domestic Violence, Crime and Victims Act 2004 s 43A(4)(c) (as so added)).

As to the meaning of 'responsible clinician' see PARA 334 note 17. Any person who has the power to make an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(3) must inform the managers of the relevant hospital if he is considering making that order: Domestic Violence, Crime and Victims Act 2004 s 43A(5) (as so added). The First-tier Tribunal or the Mental Health Review Tribunal for Wales must inform the managers of the relevant hospital if an application is made to the tribunal under the Mental Health Act 1983 s 66 or s 69 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) or the patient's case is referred to the tribunal under s 67 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 566, 568): Domestic Violence, Crime and Victims Act 2004 s 43A(6) (as so added; amended by SI 2008/2833).

If the managers of the relevant hospital receive information under the Domestic Violence, Crime and Victims Act 2004 s 43A (4), (5) or (6) and a person who appears to the managers to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 42(2) expressed a wish to make representations about a matter specified in s 42(3), or has made representations about such a matter to the managers of the hospital in which the patient was, at the time in question, detained, the managers of the relevant hospital must provide the information to the person: s 43A(7), (8) (as so added).

13 If the Domestic Violence, Crime and Victims Act 2004 s 42 applies and the transfer direction in respect of the patient was given with a restriction direction, a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 42(2) expressed a wish to receive the information specified in s 42(4), or has subsequently informed the relevant probation body that he wishes to receive that information, then the relevant probation body must, provided the restriction direction is in force, take all reasonable steps:

478 (1) to inform that person whether or not the offender is to be subject to any conditions in the event of his discharge (Domestic Violence, Crime and Victims Act 2004 s 44(1), (2), (3)(a), (8) (s 44(1) amended by the Mental Health Act 2007 Sch 6 para 14; Domestic Violence, Crime and Victims Act 2004 s 38(3), (4), (6), (7), (9) amended by SI 2008/912));

479 (2) if he is, to provide that person with details of any conditions which relate to contact with the victim or his family (Domestic Violence, Crime and Victims Act 2004 s 44(3)(b) (as so amended));

480 (3) if the restriction direction in respect of the offender is to cease to have effect, to notify that person of the date on which it is to cease to have effect (s 44(3)(c) (as so amended)); and

481 (4) to provide that person with such other information as the board or the body considers appropriate in all the circumstances of the case (s 44(3)(d) (as so amended)).

As to the meaning of 'relevant probation body' see note 11 (definition applied by s 44(9) (as so amended)).

The Secretary of State must inform the relevant probation body whether the offender is to be discharged (s 44(4)(a) (as so amended)), and if he is, whether he is to be discharged absolutely or subject to conditions (s 44(4)(b) (as so amended)) (and if he is to be discharged subject to conditions, then the Secretary of State must

inform the relevant probation body what the conditions are to be (s 44(4)(c) (as so amended))), and if he has been discharged subject to conditions the Secretary of State must inform the relevant probation body of any variation of the conditions by him and of any recall to hospital under the Mental Health Act 1983 s 42(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 501, 524) (Domestic Violence, Crime and Victims Act 2004 s 44(4)(d) (as so amended)). If the restriction direction is to cease to have effect by virtue of action to be taken by the Secretary of State, he must inform the relevant probation body of the date on which the restriction direction is to cease to have effect: s 44(4)(e) (as so amended).

If an application is made to the First-tier Tribunal or the Mental Health Review Tribunal for Wales by the offender under the Mental Health Act 1983 s 69, 70 or 75 (applications concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) or the Secretary of State refers the offender's case to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under s 71 (references concerning restricted patients: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564), then, instead of the Domestic Violence, Crime and Victims Act 2004 s 44(4) applying, the tribunal must inform the relevant probation body of the matters specified in s 44(4)(a)-(c); and where the offender has been discharged subject to conditions, the tribunal must also inform the relevant probation body of any variation of the conditions by the tribunal: s 44(5), (6)(a), (b) (as so amended; s 44(5) further amended by SI 2008/2833). If the restriction direction is to cease to have effect by virtue of action to be taken by the tribunal, the tribunal must inform the relevant probation body of the date on which the restriction direction is to cease to have effect: Domestic Violence, Crime and Victims Act 2004 s 44(6) (c). The Secretary of State must inform the relevant probation body of the matters specified in s 44(4)(d), (e): s 44(7) (as so amended). These duties to provide information apply only while the restriction direction is in force: s 44(8).

14 If, in a case where the Domestic Violence, Crime and Victims Act 2004 s 42 applies, the transfer direction in respect of the patient was given without a restriction direction and a person who appears to the local probation board or provider of probation services mentioned in the Domestic Violence, Crime and Victims Act 2004 s 42(2) to be the victim of the offence or to act for the victim of the offence, when his wishes are ascertained under s 42(2), expresses a wish to make representations about a matter specified in s 42(3) (s 42A(1), (2)(a) (s 42A added by the Mental Health Act 2007 Sch 6 para 11; Domestic Violence, Crime and Victims Act 2004 s 42A(2)-(5) amended by SI 2008/912)) or to receive the information specified in the Domestic Violence, Crime and Victims Act 2004 s 42(4) (s 42A(2)(b) (as so added and amended)), the local probation board or the provider of probation services must notify the managers of the hospital in which the patient is detained of that person's wish and of that person's name and address (s 42A(3)(a) (as so added and amended)) and notify that person of the name and address of the hospital (s 42A(3)(b) (as so added and amended)). If in such a case a person who appears to the local probation board or provider of probation services mentioned in s 42(2) to be the victim of the offence or to act for the victim of the offence, subsequently to his wishes being ascertained under s 42(2), expresses a wish to do something specified in s 42A(2)(a) or (b) the local probation board or provider of probation services mentioned in s 42(2) must take all reasonable steps to ascertain whether the transfer direction given in respect of the patient continues in force and whether a community treatment order is in force in respect of him (s 42A(4), (5)(a) (as so added and amended)) and, if the board or provider ascertains that the transfer direction does continue in force, to notify the managers of the relevant hospital of that person's wish and to notify that person of the name and address of the hospital (s 36A(5)(b) (as so added and amended)). As to the relevant hospital see PARA 334 note 15 (definition applied by s 42A(6) (as so added)).

15 If, in a case where the Domestic Violence, Crime and Victims Act 2004 s 42 applies, the transfer direction in respect of the patient was made without a restriction direction, the responsible clinician must inform the managers of the relevant hospital:

- 482 (1) whether he is to make an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(2) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 454) (Domestic Violence, Crime and Victims Act 2004 s 44A(1), (2)(a) (s 44A added by the Mental Health Act 2007 Sch 6 para 15));
- 483 (2) whether he is to make a community treatment order in respect of the patient (Domestic Violence, Crime and Victims Act 2004 s 44A(2)(b) (as so added));
- 484 (3) if a community treatment order is to be made in respect of the patient, what conditions are to be specified in the order (s 44A(2)(c) (as so added));
- 485 (4) if a community treatment order is in force in respect of the patient, of any variation to be made under the Mental Health Act 1983 s 17B(4) (see **MENTAL HEALTH**) of the conditions specified in the order (Domestic Violence, Crime and Victims Act 2004 s 44A(2)(d) (as so added));
- 486 (5) if a community treatment order in respect of the patient is to cease to be in force, of the date on which it is to cease to be in force (s 44A(2)(e) (as so added));
- 487 (6) if, following the examination of the patient under the Mental Health Act 1983 s 20 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 461, 520), it does not appear to the responsible

clinician that the conditions set out in s 20(4) are satisfied, of the date on which the authority for the patient's detention is to expire (Domestic Violence, Crime and Victims Act 2004 s 44A(2)(f) (as so added)).

As to the relevant hospital see PARA 334 note 15 (definition applied by s 44A(8) (as so added)). Any person who has the power to make an order for discharge in respect of the patient under the Mental Health Act 1983 s 23(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 454) must inform the managers of the relevant hospital if he is to make that order: Domestic Violence, Crime and Victims Act 2004 s 44A(3) (as so added).

If in such a case:

- 488 (a) an application is made to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under the Mental Health Act 1983 s 66 or 69 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 496, 564) (Domestic Violence, Crime and Victims Act 2004 s 44A(4)(a) (as so added; s 44A(4) amended by SI 2008/2833));
- 489 (b) the patient's case is referred to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under the Mental Health Act 1983 s 67 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 566, 568) (Domestic Violence, Crime and Victims Act 2004 s 44A(4)(b) (as so added and amended)); or
- 490 (c) the managers of the relevant hospital refer the patient's case to the First-tier Tribunal or the Mental Health Review Tribunal for Wales under the Mental Health Act 1983 s 68 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 567) (Domestic Violence, Crime and Victims Act 2004 s 44A(4)(c) (as so added and amended)),

the tribunal must inform the managers of the relevant hospital if it directs that the patient is to be discharged (s 44A(5) (as so added)).

If a person who appears to the managers of the relevant hospital to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 42(2), expressed a wish to receive the information specified in s 42(4), or has subsequently informed the managers of the relevant hospital that he wishes to receive that information, the managers of the relevant hospital order must take all reasonable steps:

- 491 (i) to inform that person whether the patient is to be discharged under the Mental Health Act 1983 s 23 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 523) or s 72 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 573-574) (Domestic Violence, Crime and Victims Act 2004 s 44A(6), (7)(a) (as so added));
- 492 (ii) to inform that person whether a community treatment order is to be made in respect of the patient (s 44A(7)(b) (as so added));
- 493 (iii) if a community treatment order is to be made in respect of the patient and is to specify conditions which relate to contact with the victim or his family, to provide that person with details of those conditions (s 44A(7)(c) (as so added));
- 494 (iv) if a community treatment order is in force in respect of the patient and the conditions specified in the order are to be varied under the Mental Health Act 1983 s 17B(4) (see **MENTAL HEALTH**), to provide that person with details of any variation which relates to contact with the victim or his family (Domestic Violence, Crime and Victims Act 2004 s 44A(7)(d) (as so added));
- 495 (v) if a community treatment order in respect of the patient is to cease to be in force, to inform that person of the date on which it is to cease to be in force (s 44A(7)(e) (as so added));
- 496 (vi) if, following the examination of the patient under the Mental Health Act 1983 s 20 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 461, 520), the authority for the patient's detention is not to be renewed, to inform that person of the date on which the authority is to expire (Domestic Violence, Crime and Victims Act 2004 s 44A(7)(f) (as so added)); and
- 497 (vii) to provide that person with such other information as the managers of the relevant hospital consider appropriate in all the circumstances of the case (s 44A(7)(g) (as so added)).

16 If in a case where the Domestic Violence, Crime and Victims Act 2004 s 42 applies the transfer direction in respect of the patient was given with a restriction direction and the restriction direction ceases to be in force while the transfer direction continues in force (Domestic Violence, Crime and Victims Act 2004 s 44B(1) (s 44B added by the Mental Health Act 2007 Sch 6 para 15)), and a person who appears to the relevant probation body to be the victim of the offence or to act for the victim of the offence when his wishes were ascertained under s 42(2), expressed a wish to make representations about a matter specified in s 42(3) or to receive the information specified in s 42(4), or has subsequently informed the relevant probation body that he wishes to make representations about such a matter or to receive that information (Domestic Violence, Crime and Victims

Act 2004 s 44B(2) (as so added; s 44B(2), (3), (6) amended by SI 2008/912)), the relevant probation body must take all reasonable steps to notify the managers of the relevant hospital of an address at which that person may be contacted and to notify that person of the name and address of the hospital (Domestic Violence, Crime and Victims Act 2004 s 44B(3) (as so added and amended)). As to the meaning of 'relevant probation body' see note 11 (definition applied by s 44B(6) (as so added and amended)). As to the meaning of 'relevant hospital' see s 36A(6); and PARA 340 note 15 (definition applied by s 44B(5) (as so added and amended)). As to the managers see PARA 340 note 15. While the transfer direction continues in force the patient is to be regarded as a patient in respect of whom a transfer direction was given without a restriction direction; and ss 43A, 44A (see notes 13, 16) are to apply in relation to him accordingly: s 44B(4) (as so added).

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(vii) Parenting Orders

343. Making of parenting orders on conviction.

A parenting order is a court order which requires the parent to comply with such requirements as are specified in the order¹ and to attend such counselling or guidance sessions as may be specified². These orders may be made in a number of circumstances including where an anti-social behaviour order³ or sexual offences prevention order⁴ is made in respect of a child or young person, where a child or young person is convicted of an offence or where a person is convicted of failing to comply with a school attendance order or of failing to secure the attendance of a pupil at school⁵.

1 See the Crime and Disorder Act 1998 s 8(4)(a); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1319.

2 See the Crime and Disorder Act 1998 s 8(4)(b); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1319.

3 See PARAS 304 et seq, 496 et seq.

4 See PARA 360 et seq.

5 See the Crime and Disorder Act 1998 s 8(1); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1320. See further **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1321-1334; and in connection with parental compensation orders see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1335-1338.

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(viii) Referral Orders

344. Duty and power to refer to youth offender panels.

The following provisions¹ apply where a youth court² or other magistrates' court is dealing with a person aged under 18³ for an offence and:

- 1114 (1) neither the offence nor any connected offence⁴ is one for which the sentence is fixed by law⁵;
- 1115 (2) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order⁶ in his case⁷; and
- 1116 (3) the court is not proposing to discharge him absolutely in respect of the offence⁸.

If the compulsory referral conditions are satisfied⁹, and referral is available to the court¹⁰, the court must sentence the offender for the offence by ordering him to be referred to a youth offender panel¹¹. If the discretionary referral conditions are satisfied¹², and referral is available to the court, the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel¹³. Both such orders are termed referral orders¹⁴.

1 Ie the Powers of Criminal Courts (Sentencing) Act 2000 s 16.

2 As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

3 As to the age of an offender for sentencing purposes see PARA 27.

4 For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 Pt III (ss 16-32) an offence is connected with another if the offender falls to be dealt with for it at the same time as he is dealt with for the other offence (whether or not he is convicted of the offences at the same time or by or before the same court): s 16(4).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 16(1)(a).

6 Ie within the meaning of the Mental Health Act 1983: see PARA 332; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 16(1)(b).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 16(1)(c). As to absolute discharge see PARA 40.

9 As to compulsory referral conditions see PARA 345.

10 For these purposes, referral is available to a court if the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside; and the notice has not been withdrawn: Powers of Criminal Courts (Sentencing) Act 2000 s 16(5).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 16(2). As to youth offender panels see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1295 et seq. Where s 16(2) requires a court to make a referral order, the court may not under s 1 (see PARA 22) defer passing sentence on him, but s 16(2) does not affect any power or duty of a magistrates' court under:

- 498 (1) s 8 (remission to youth court, or another such court, for sentence) (see PARA 5; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1259) (s 19(7)(a));
- 499 (2) the Magistrates' Courts Act 1980 s 10(3) (adjournment for inquiries) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 711) (Powers of Criminal Courts (Sentencing) Act 2000 s 19(7)(b)); or
- 500 (3) the Mental Health Act 1983 s 35, s 38, s 43 or s 44 (remand for reports, interim hospital orders and committal to Crown Court for restriction order) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 489, 491, 498) (Powers of Criminal Courts (Sentencing) Act 2000 s 19(7)(c)).

12 As to the discretionary referral conditions see PARA 345.

13 Powers of Criminal Courts (Sentencing) Act 2000 s 16(3).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 16(6). No referral order may be made in respect of any offence committed before 25 August 2000 (ie the commencement of the Youth Justice and Criminal Evidence Act 1999 s 1 (repealed), from which these provisions derive): Powers of Criminal Courts (Sentencing) Act 2000 s 16(7).

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345. The referral conditions.

The compulsory referral conditions¹ are satisfied in relation to an offence if the offence is punishable with imprisonment and the offender²:

- 1117 (1) pleaded guilty to the offence and to any connected offence³; and
- 1118 (2) until a day to be appointed, has never been convicted by or before a court in the United Kingdom⁴ of any offence other than the offence and any connected offence or, as from that day, has never been convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence or convicted by or before a court in another member state of any offence⁵.

The discretionary referral conditions⁶ are satisfied in relation to an offence if the compulsory referral conditions are not satisfied in relation to the offence⁷, the offender pleaded guilty to the offence or, if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences⁸, and any one of three further conditions relating to the offender's previous criminal history are satisfied⁹ in relation to the offender¹⁰.

¹ ie in relation to the Powers of Criminal Courts (Sentencing) Act 2000 s 16(2) (see PARA 344) and s 17(2) (see the text and notes 6-8).

² Powers of Criminal Courts (Sentencing) Act 2000 s 17(1) (s 17(1) amended, s 17(2) substituted, s 17(2A)-(2D) added, by the Criminal Justice and Immigration Act 2008 s 35, Sch 28 Pt 2; Powers of Criminal Courts (Sentencing) Act 2000 s 17(1) also amended by SI 2003/1605). The Referral Orders (Amendment of Referral Conditions) Regulations 2003, SI 2003/1605, were made pursuant to the Powers of Criminal Courts (Sentencing) Act 2000 s 16(3), which empowers the Secretary of State by regulations to make such amendments of s 17 as he considers appropriate for altering in any way the descriptions of offenders in the case of which the compulsory referral conditions or the discretionary referral conditions fall to be satisfied for the purposes of s 16(2) or (3). Any description of offender may be framed by reference to such matters as the Secretary of State considers appropriate, including, in particular, one or more of:

- 501 (1) the offender's age (s 17(4)(a));
- 502 (2) how the offender has pleaded (s 17(4)(b));
- 503 (3) the offence (or offences) of which the offender has been convicted (s 17(4)(c));
- 504 (4) the offender's previous convictions, if any (s 17(4)(d));
- 505 (5) how, if at all, the offender has been previously punished or otherwise dealt with by any court (s 17(4)(e)); and
- 506 (6) any characteristics or behaviour of, or circumstances relating to, any person who has at any time been charged in the same proceedings as the offender (whether or not in respect of the same offence) (s 17(4)(f)).

³ Powers of Criminal Courts (Sentencing) Act 2000 s 17(1)(a) (as amended: see note 2). As to the meaning of 'connected offence' see PARA 344 note 4.

⁴ As to the meaning of 'United Kingdom' see PARA 9 note 2.

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 17(1)(b) (as amended (see note 2); s 17(1)(b), (2B), (2C)(a) prospectively substituted, s 17(2A) prospectively amended, by the Coroners and Justice Act 2009 Sch 17

para 12). At the date at which this volume states the law no day had been appointed for the coming into force of these amendments.

6 le in relation to the Powers of Criminal Courts (Sentencing) Act 2000 s 16(3): see PARA 644.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 17(2)(a) (as substituted: see note 2).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 17(2)(b) (as substituted: see note 2).

9 le any one of the conditions set out in the Powers of Criminal Courts (Sentencing) Act 2000 s 17(2A)-(2C), as follows:

507 (1) section 17(2A) is satisfied in relation to the offender if the offender has never been convicted by or before a court in the United Kingdom (a 'UK court') of any offence other than the offence and any connected offence and (as from a day to be appointed) has never been convicted by or before a court in another member state of any offence (s 17(2A) (as added and prospectively amended: see notes 2, 5));

508 (2) until a day to be appointed s 17(2B) is satisfied in relation to the offender if the offender has been dealt with by a UK court for any offence other than the offence and any connected offence on only one previous occasion, but was not referred to a youth offender panel under s 16 on that occasion; as from that day s 17(2B) is satisfied in relation to the offender if, disregarding the offence and any connected offence, the offender has been dealt with by a UK court for any offence on only one previous occasion and was not referred to a youth offender panel under s 16 on that occasion, or the offender has been dealt with by a court in any member state other than the United Kingdom on only one previous occasion (s 17(2B) (as so added and prospectively substituted)); and

509 (3) section 17(2C) is satisfied in relation to the offender if:

4. (a) until a day to be appointed, the offender has been dealt with by a UK court for any offence other than the offence and any connected offence on one or more previous occasions, but has been referred to a youth offender panel under s 16 on only one previous occasion; or (as from that day), disregarding the offence and any connected offence, the offender has been dealt with by a UK court or a court in another member state for any offence on one or more previous occasions, and has either never been referred to a youth offender panel under s 16 above or been referred to a youth offender panel on only one previous occasion (s 17(2C)(a) (as so added and prospectively substituted));

5

5. (b) an appropriate officer recommends to the court as suitable for the offender a referral to a youth offender panel under s 16 in respect of the offence (s 17(2C)(b) (as so added)); and

6

6. (c) the court considers that there are exceptional circumstances which justify ordering the offender to be so referred (s 17(2C)(c) (as so added)).

7

In s 17(2C)(b) 'appropriate officer' means a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services: s 17(2D) (as so added). As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq. As to local probation boards and providers of probation services see PARA 733 et seq.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 17(2)(c) (as substituted: see note 2).

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346. Making of referral orders.

A referral order must:

- 1119 (1) specify the youth offending team¹ responsible for implementing the order²;
- 1120 (2) require the offender to attend each of the meetings of a youth offender panel³ to be established by the team for the offender⁴; and
- 1121 (3) specify the period for which any youth offender contract taking effect between the offender and the panel⁵ is to have effect⁶.

The youth offending team specified under head (1) above is the team having the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside⁷.

On making a referral order the court must explain to the offender in ordinary language the effect of the order, and the consequences which may follow if no youth offender contract takes effect between the offender and the panel⁸, or if the offender breaches any of the terms of any such contract⁹.

Where, in dealing with an offender for two or more connected offences¹⁰, a court makes a referral order in respect of each, or each of two or more, of the offences¹¹:

- 1122 (a) the orders have the effect of referring the offender to a single youth offender panel¹²;
- 1123 (b) the court may direct that the period so specified in either or any of the orders is to run concurrently with or to be additional to that specified in the other or any of the others¹³; and
- 1124 (c) each of the orders¹⁴ must, for these purposes¹⁵, be treated as associated with the other or each of the others¹⁶.

1 As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

2 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(1)(a).

3 As to youth offender panels see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1295 et seq. For these purposes, 'meeting', in relation to a youth offender panel, is to be construed in accordance with the Powers of the Criminal Courts (Sentencing) Act 2000 s 21(7) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1295): s 32.

4 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(1)(b).

5 Ie under the Powers of the Criminal Courts (Sentencing) Act 2000 s 23: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1297.

6 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(1)(c). The specified period must not be less than three nor more than 12 months: s 18(1).

7 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(2).

8 See note 3.

- 9 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(3).
- 10 As to the meaning of 'connected offence' see PARA 344 note 4.
- 11 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(4).
- 12 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(5). The provision made under heads (1)-(3) in the text must accordingly be the same in each case, except that the periods specified under head (3) in the text may be different: s 18(5). As to the establishment of a Youth Offender Panel see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1295.
- 13 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(6). However, in exercising its power under s 18(6), the court must ensure that the total period for which such a contract as is mentioned in head (3) in the text is to have effect does not exceed 12 months: s 18(6).
- 14 Ie the orders mentioned in the Powers of the Criminal Courts (Sentencing) Act 2000 s 18(4): see the text to note 11.
- 15 Ie for the purposes of the Powers of the Criminal Courts (Sentencing) Act 2000 Pt III (ss 16-32).
- 16 Powers of the Criminal Courts (Sentencing) Act 2000 s 18(7).

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347. The effect of referral orders on the court's other sentencing powers.

Where a court makes a referral order in respect of an offence¹:

- 1125 (1) the court may not deal with the offender for the offence by²:
- .6
6. (a) imposing a community sentence³ (or, as from a day to be appointed⁴, a sentence which consists of or includes a youth rehabilitation order⁵) on the offender⁶;
 7. (b) ordering him to pay a fine⁷;
 8. (c) making a reparation order⁸ in respect of him⁹; or
 9. (d) making an order discharging him conditionally¹⁰;
- .7
- 1126 (2) the court:
- .8
10. (a) must, in respect of any connected offence¹¹, either sentence the offender by making a referral order or make an order discharging him absolutely¹²; and
 11. (b) may not deal with the offender for any such offence in any of the prohibited ways listed in heads (1)(a) to (d) above¹³; and
- .9
- 1127 (3) the court may not make, in connection with the conviction of the offender for the offence or any connected offence:
- .10
12. (a) an order binding him over to keep the peace or to be of good behaviour¹⁴;
 - or
 13. (b) an order binding over an offender's parent or guardian¹⁵.
- .11

Where a court is required to make a referral order¹⁶, the court may not¹⁷ defer passing sentence on him¹⁸.

1 Powers of Criminal Courts (Sentencing) Act 2000 s 19(1).

2 Powers of Criminal Courts (Sentencing) Act 2000 s 19(2). The provisions of s 19(2), (3), (5) do not affect the exercise of any power to deal with the offender conferred by Sch 1 Pt I para 5 (offender referred back to court by panel: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1302) or Sch 1 Pt II para 14 (powers of a court where offender convicted while subject to referral: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1305): s 19(6).

3 As to community sentences generally see PARA 163 et seq.

4 See note 6.

5 As to the replacement of youth community orders by youth rehabilitation orders see PARAS 163, 229; as to youth rehabilitation orders generally PARA 202 et seq.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 19(4)(a) (prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 4 paras 51, 52). At the date at which this volume states the law no date had been appointed for the coming into force of this amendment.

- 7 Powers of Criminal Courts (Sentencing) Act 2000 s 19(4)(b). As to fines, recognisances and surcharges see PARA 139 et seq.
- 8 As to reparation orders see PARA 384 et seq.
- 9 Powers of Criminal Courts (Sentencing) Act 2000 s 19(4)(c).
- 10 Powers of Criminal Courts (Sentencing) Act 2000 s 19(4)(d). As to discharge see PARA 40 et seq.
- 11 As to the meaning of 'connected offence' see PARA 344 note 4.
- 12 Powers of Criminal Courts (Sentencing) Act 2000 s 19(3)(a). See note 2. Where s 16(2) (see PARA 344) requires a court to make a referral order, the court may not under s 1 (see PARA 22) defer passing sentence on him, but s 19(3)(a) does not affect any power or duty of a magistrates' court under:
 - 510 (1) s 8 (remission to youth court, or another such court, for sentence) (see PARA 5; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1259) (s 19(7)(a));
 - 511 (2) the Magistrates' Courts Act 1980 s 10(3) (adjournment for inquiries) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 711) (Powers of Criminal Courts (Sentencing) Act 2000 s 19(7)(b)); or
 - 512 (3) the Mental Health Act 1983 s 35, s 38, s 43 or s 44 (remand for reports, interim hospital orders and committal to Crown Court for restriction order) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 489, 491, 498) (Powers of Criminal Courts (Sentencing) Act 2000 s 19(7)(c)).
- 13 Powers of Criminal Courts (Sentencing) Act 2000 s 19(3)(b). See note 2.
- 14 Powers of Criminal Courts (Sentencing) Act 2000 s 19(5)(a). See note 2. As to binding over see PARAS 151-152.
- 15 Powers of Criminal Courts (Sentencing) Act 2000 s 19(5)(b). As to such an order see s 150; PARA 312; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1288. See note 2.
- 16 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 16(2): see PARA 344.
- 17 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 1: see PARA 22.
- 18 Powers of Criminal Courts (Sentencing) Act 2000 s 19(7).

UPDATE

347 The effect of referral orders on the court's other sentencing powers

NOTE 6--Day appointed is 30 November 2009: SI 2009/3074.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(viii) Referral Orders/348. Attendance of parents at the making of referral orders.

348. Attendance of parents at the making of referral orders.

A court making a referral order¹ may make an order requiring the guardian or parent of the offender (the 'appropriate person')², or, in a case where there are two or more appropriate persons, any one or more of them, to attend the meetings of the youth offender panel³. Where an offender is aged under 16 when a court makes a referral order in his case the court must exercise this power so as to require at least one appropriate person to attend meetings of the youth offender panel⁴. If the offender is a child who is looked after by the local authority⁵, the person or persons so required to attend those meetings must be or include a representative of the relevant local authority⁶. The court must not⁷ make an order requiring a person to attend meetings of the youth offender panel if the court is satisfied that it would be unreasonable to do so, or to an extent which the court is satisfied would be unreasonable⁸.

If, at the time when a court makes such an order⁹:

- 1128 (1) a person who is required by the order to attend meetings of a youth offender panel is not present in court¹⁰; or
- 1129 (2) a local authority whose representative is so required to attend such meetings is not represented in court¹¹,

the court must send him or (as the case may be) the authority a copy of the order immediately¹².

1 As to the making of referral orders see PARA 344.

2 Except where the offender falls within the Powers of Criminal Courts (Sentencing) Act 2000 s 20(6) (see the text and note 5), each person who is a parent or guardian of the offender is an 'appropriate person' for the purposes of s 20: s 20(4).

3 Powers of Criminal Courts (Sentencing) Act 2000 s 20(1). As to the youth offender panel and meetings in relation to youth offender panels see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 344, 346.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 20(2)(a).

5 Ie within the meaning of the Children Act 1989: see the Powers of Criminal Courts (Sentencing) Act 2000 s 20(6); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 867. Where the offender falls within s 20(6), each of the following is an 'appropriate person' for the purposes of s 20:

513 (1) a representative of the local authority mentioned in s 20(6) (s 20(5)(a)); and

514 (2) each person who is a parent or guardian of the offender with whom the offender is allowed to live (s 20(5)(b)).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 20(2)(b).

7 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 20.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 20(3).

9 See note 7.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 20(7)(a).

- 11 Powers of Criminal Courts (Sentencing) Act 2000 s 20(7)(b).
- 12 Powers of Criminal Courts (Sentencing) Act 2000 s 20(7).

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(ix) Restraining Orders

349. Restraining orders.

In the circumstances described below, a court may make a restraining order¹. Such an order may, for the purpose of protecting the victim or victims of an offence, or any other person mentioned in the order, from conduct which either amounts to harassment² or will cause a fear of violence, prohibit the defendant from doing anything described in the order³, and may be made by a court sentencing or otherwise dealing with a person convicted of any offence⁴. A court may make a restraining order in addition to sentencing the defendant or dealing with him in any other way⁵ and may also make a restraining order in respect of a person who is acquitted of an offence before it⁶ if it considers it necessary to do so to protect a person from harassment by that person⁷; and such an order may prohibit the defendant from doing anything described in it⁸.

A restraining order may have effect for a specified period or until further order⁹ and must identify the protected party by name¹⁰. If without reasonable excuse¹¹ the defendant does anything which he is prohibited from doing by a restraining order, he is guilty of an offence¹².

A court dealing with a person for an offence under these provisions may vary or discharge the order in question by a further order¹³.

1 Protection from Harassment Act 1997 s 5(1).

2 Protection from Harassment Act 1997 s 5(2)(a) (s 5(1), (2) amended, and ss 5(3A), (4A), (7), 5A added, by the Domestic Violence, Crime and Victims Act 2004 s 12, Sch 10 para 43(1), (3); Protection from Harassment Act 1997 s 5(2)(a) amended by the Serious Organised Crime and Police Act 2005 s 125(1), (6)). As to what constitutes 'harassment' see the Protection from Harassment Act 1997 s 7(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 152.

3 Protection from Harassment Act 1997 s 5(2)(b). A restraining order must be drafted in clear and precise terms so there is no doubt as to what the defendant is prohibited from doing: *R v Debnath* [2005] EWCA Crim 3472, [2006] 2 Cr App Rep (S) 169, [2006] Crim LR 451. Orders should be framed in practical terms (eg by reference to specific roads or a specific address) and if necessary a map should be prepared: *R v Debnath*. In considering the terms and extent of a restraining order a court should have regard to considerations of proportionality: *R v Debnath*.

4 Protection from Harassment Act 1997 s 5(1) (as amended: see note 2).

5 Protection from Harassment Act 1997 s 5(1) (as amended: see note 2).

6 Where the Crown Court allows an appeal against conviction, or a case is remitted to the Crown Court under the Protection from Harassment Act 1997 s 5A(3) (see note 7), the reference to a court before which a person is acquitted of an offence is to be read as referring to that court: s 5A(4) (as added: see note 2).

7 Protection from Harassment Act 1997 s 5A(1) (as added: see note 2). A person made subject to an order under s 5A has the same right of appeal against the order as if he had been convicted of the offence in question before the court which made the order, and as if the order had been made under s 5: s 5A(5) (as so added). Where the Court of Appeal allows an appeal against conviction it may remit the case to the Crown Court to consider whether to proceed under this provision: s 5A(3) (as so added).

8 Protection from Harassment Act 1997 s 5A(1) (as added: see note 2).

9 Protection from Harassment Act 1997 ss 5(3), 5A(2) (s 5A(2) as added: see note 2). The prosecutor, defendant or any other person mentioned in the order may apply to the court which made the order for it to be

varied or discharged by a further order: s 5(4). Any person mentioned in the order is entitled to be heard on the hearing of such an application: s 5(4A) (as so added). Where an order is expressed as being until further order has been made, an application, or further application, to discharge the order under s 5(4) should be made only where circumstances have changed such that the continuance of the order is no longer necessary or appropriate: *Shaw v DPP* [2005] EWHC 1215 (Admin), [2005] 7 Archbold News 2, [2005] All ER (D) 93 (Apr), DC. A restraining order made for a specified period may be varied by extending the expiry date: see *DPP v Hall* [2005] EWHC 2612 (Admin), [2006] 3 All ER 170, [2006] 1 WLR 1000. Where an order is varied it is desirable that the order as varied is drawn up as a fresh document containing all its terms: *R v Liddle* [2001] EWCA Crim 2512, [2002] 1 Archbold News 2. In proceedings under the Protection from Harassment Act 1997 s 5 or s 5A both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under the Protection from Harassment Act 1997 s 3 (see **TORT** vol 97 (2010) PARA 557): s 5(3A) (as so added).

10 *R v Mann* (2000) 144 Sol Jo LB 150, (2000) Times, 11 April, CA.

11 It is for the defendant to raise the evidential issue of reasonable excuse and then for the prosecution to prove lack of that excuse: see *R v Evans (Dorothy)* [2004] EWCA Crim 3102, [2005] 1 WLR 1435, [2005] 1 Cr App Rep 546 (in interpreting the terms of a restraining order the matter of whether a word or phrase in the order was being used in its ordinary sense or a special sense is a question of law in each individual case; if, as a matter of law, the word or phrase was being used in its ordinary sense, it is for the tribunal of fact to apply that meaning to the facts as found).

12 Protection from Harassment Act 1997 s 5(5). A person guilty of this offence is liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine or to both, or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both: s 5(6). See *R v Liddle* [1999] 3 All ER 816, [2000] 1 Cr App Rep (S) 131, CA; *R v Lydon* [2005] EWCA Crim 1909, [2006] 1 Cr App Rep (S) 342. As from a day to be appointed the maximum term is increased to a maximum term of 12 months, although this does not affect the penalty for any offence committed before the appointed day: see the Criminal Justice Act 2003 ss 281(7), 282(2)-(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121. At the date at which this volume states the law no such day had been appointed. As to the statutory maximum see PARA 140. For guidelines see the Sentencing Guidelines Council Guideline *Breach of a Protective Order* (2006) (made under the more restricted version of the Protection from Harassment Act 1997 s 5, which applied only to offences under that Act); and PARA 650.

When sentencing for breach of a restraining order, courts should take into account: (1) the nature of the act giving rise to the breach; (2) the effect on the victim; (3) whether the offence was the first breach or the latest in a series of breaches; (4) the record of the offender, especially his previous response to community penalties; and (5) the need to protect the person named in the order: *R v Pace* [2004] EWCA Crim 2018, [2005] 1 Cr App Rep (S) 370.

13 Protection from Harassment Act 1997 s 5(7) (as added: see note 2).

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(x) Serious Crime Prevention Orders

350. Power to make orders on conviction.

Where the Crown Court in England and Wales¹ is dealing with a person aged 18 or over² who:

- 1130 (1) has been convicted by or before a magistrates' court of having committed a serious offence³ in England and Wales⁴ and has been committed to the Crown Court to be dealt with⁵; or
- 1131 (2) has been convicted by or before the Crown Court of having committed a serious offence in England and Wales⁶,

the court may, in addition to dealing with the person in relation to the offence, on application⁷ make a serious crime prevention order if it has reasonable grounds to believe that the order would protect the public⁸ by preventing, restricting or disrupting involvement by the person in serious crime⁹ in England and Wales¹⁰. Such an order may be made only in addition to a sentence imposed in respect of the offence concerned¹¹ or in addition to an order discharging the person conditionally¹², and may contain such prohibitions, restrictions, requirements and other terms as the court considers appropriate¹³. Orders may be made against bodies corporate, partnerships and unincorporated associations as well as against individuals¹⁴.

Failure to comply with a serious crime prevention order is an offence¹⁵ in respect of which a forfeiture order¹⁶ or (where applicable) a winding-up order¹⁷ may be made.

1 Proceedings before the Crown Court arising by virtue of the Serious Crime Act 2007 s 19 (see the text and notes 2-13) or s 20 or s 21 (see PARA 356) are civil proceedings: see s 36(1); and as to proceedings in connection with serious crime prevention orders see CPR Pt 77. One consequence of this is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof (s 36(2)), and two other consequences of this are that the court is not restricted to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted (s 36(2)(a)) and may adjourn any proceedings in relation to a serious crime prevention order even after sentencing the person concerned (s 36(2)(b)). The Crown Court, when exercising its jurisdiction in England and Wales under Pt 1 (ss 1-43) is a criminal court for the purposes of the Courts Act 2003 Pt 7 (ss 68-85) (procedure rules and practice directions: see **COURTS**): Serious Crime Act 2007 s 36(4). As to appeals from decisions of the Crown Court see PARA 357.

2 An individual under the age of 18 may not be the subject of a serious crime prevention order: Serious Crime Act 2007 ss 6, 19(6). A person also may not be the subject of a serious crime prevention order if he falls within a description specified by order of the Secretary of State (s 7): at the date at which this volume states the law no such order had been made. For the purposes of Pt 1 references to the person who is the subject of a serious crime prevention order are references to the person against whom the public are to be protected: s 1(6).

3 In considering for the purposes of the Serious Crime Act 2007 Pt 1 whether a person has committed a serious offence (see note 4):

515 (1) the court must decide that the person has committed the offence if he has been convicted of the offence and the conviction has not been quashed on appeal nor has the person been pardoned of the offence (s 4(1)(a)); but

516 (2) the court must not otherwise decide that the person has committed the offence (s 4(1)(b)).

4 As to a 'serious offence in England and Wales', and the offences in relation to which serious crime prevention orders may be made, see PARA 351.

5 Serious Crime Act 2007 s 19(1)(a).

6 Serious Crime Act 2007 s 19(1)(b).

7 A serious crime prevention order in England and Wales may be made only on an application by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office: Serious Crime Act 2007 s 8(a). As to the functions of the Directors see PARA 359.

8 'The public' includes a section of the public or a particular member of the public: Serious Crime Act 2007 s 42.

9 As to involvement by a person in serious crime in England and Wales see PARA 352.

10 Serious Crime Act 2007 ss 1(5)(b), 19(2), (8). The requirements set out in s 19(2) need not be satisfied if the order proposed to be made contains terms requiring the subject of the order to pay the costs of monitoring compliance with the order (ie under s 39(4), (5)): see s 39(6); and PARA 358 note 7.

Serious crime prevention orders may also be made other than on conviction by the High Court (see s 1; and PARA 599), and a decision by the Crown Court not to make an order under s 19 does not prevent a subsequent application to the High Court for an order under s 1 in consequence of the same offence (s 22(3)). Provision is also made in connection with the making of serious crime prevention orders in Northern Ireland: see s 19(3), (4).

11 Serious Crime Act 2007 s 19(7)(a).

12 Serious Crime Act 2007 s 19(7)(b). A serious crime prevention order may be made as mentioned in s 19(7)(b) in spite of anything in the Powers of Criminal Courts (Sentencing) Act 2000 ss 12, 14 (which relate to orders discharging a person absolutely or conditionally and their effect: see PARAS 40, 41): Serious Crime Act 2007 s 36(5).

13 See the Serious Crime Act 2007 s 19(5); and PARA 353. The requirement set out in s 19(5) need not be satisfied if the order proposed to be made contains terms requiring the subject of the order to pay the costs of monitoring compliance with the order (ie under s 39(4), (5)): see s 39(6); and PARA 358 note 9.

The subject of a serious crime prevention order is bound by it (or a variation of it: see PARAS 355, 356) only if he is represented (whether in person or otherwise) at the proceedings at which the order or (as the case may be) variation is made or a notice setting out the terms of the order or (as the case may be) variation has been served on him: s 10(1). The notice may be served on him by delivering it to him in person or sending it by recorded delivery to him at his last-known address (whether residential or otherwise): s 10(2). For the purposes of delivering such a notice to him in person, a constable or a person authorised for the purpose by the relevant applicant authority may (if necessary by force) enter any premises where he has reasonable grounds for believing the person to be and search those premises for him: s 10(3). In Pt 1 the 'relevant applicant authority' means, in relation to a serious crime prevention order in England and Wales, either the Director of Public Prosecutions (where the order was applied for by the Director of Public Prosecutions), the Director of Revenue and Customs Prosecutions where the order was applied for by the Director of Revenue and Customs Prosecutions) and the Director of the Serious Fraud Office (where the order was applied for by the Director of the Serious Fraud Office): s 10(4).

For the purposes of s 10 in its application to a serious crime prevention order against a body corporate, a partnership or an unincorporated association, or to the variation of such an order, a notice setting out the terms of the order or variation is delivered to the body corporate, partnership or association in person if it is delivered to an officer of the body corporate or any of the partners or an officer of the association in person (ss 30(1)(a)(i), 31(4)(a)(i), 32(3)(a)(ii)) and is sent by recorded delivery to the body corporate, partnership or association at its last-known address if it is so sent to an officer of the body corporate or any of the partners or a senior officer of the partnership or an officer of the association at the address of the registered office of that body or at the address of the body's, partnership's or association's principal office in the United Kingdom (ss 30(1)(a)(ii), 31(4)(a)(ii), 32(3)(a)(ii)), and the power conferred by s 10(3) is a power to enter any premises where the person exercising the power has reasonable grounds for believing an officer of the body corporate or association or a partner or senior officer of the partnership to be and to search those premises for the officer, partner or senior officer (ss 30(1)(b), 31(4)(b), 32(3)(b)). For this purpose 'body corporate' includes a limited liability partnership; 'officer of a body corporate' means any director, manager, secretary or other similar officer of the body corporate; 'director', in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate; 'senior officer of a partnership' means any person who has the control or management of the business carried on by the partnership at the principal place where it is carried on; 'partnership' does not include a limited liability partnership; 'officer of an unincorporated association' means any officer of an unincorporated association or any member of its governing body; and 'unincorporated

association' means any body of persons unincorporate but does not include a partnership: ss 30(4), 31(11), 32(10). Nothing in ss 30, 31, 32 prevents a serious crime prevention order from being made against an officer or employee of a body corporate, a particular partner or senior officer or employee of a partnership, a member, officer or employee of an unincorporated association, or any other person associated with a body corporate, partnership or unincorporated association: ss 30(3), 31(10), 32(9).

The Secretary of State may by order modify s 30, s 31 or s 32 in its application to a body of persons formed under law having effect outside the United Kingdom: s 33. At the date at which this volume states the law no such order had been made.

14 See notes 13, 15. A serious crime prevention order against a partnership or unincorporated association must be made in the name of the partnership or association (and not in that of any of the partners or members): Serious Crime Act 2007 ss 31(1), 32(1). An order made in the name of the partnership or association continues to have effect despite a change of partners or a change in the membership of the association provided that at least one of the persons who was a partner or a member of the association before the change remains a partner or member after it: ss 31(2), 32(2).

The Crown Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it arising by virtue of s 19 if it considers that the making of the serious crime prevention order concerned would be likely to have a significant adverse effect on that person: s 9(4).

15 A person who without reasonable excuse fails to comply with a serious crime prevention order commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, and on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both: Serious Crime Act 2007 s 25(1), (2). A fine imposed on a partnership or unincorporated association on its conviction for an offence under s 25 is to be paid out of the partnership assets or, as the case may be, the funds of the corporation: ss 31(7), 32(6). As to the meanings of the terms used in ss 30-32 see note 13.

In proceedings for an offence under s 25, a copy of the original order or any variation of it, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings: s 25(4). For the purposes of s 25, a failure to comply with a requirement imposed by virtue of s 39(4), (5) (see PARA 358) to make payments occurs when the amounts become recoverable as mentioned in s 40(5) (see PARA 358) (and not before): s 40(7).

If an offence under s 25 committed by a body corporate, partnership or unincorporated association is proved to have been committed with the consent or connivance of an officer of the body corporate, a partner or senior officer of the partnership, an officer of the association, or a person who was purporting to act in any such capacity, he (as well as the body corporate, partnership or association) is guilty of the offence and liable to be proceeded against and punished accordingly: ss 30(2), 31(8), (9)(a), 32(7), (8)(a). Proceedings for an offence under s 25 alleged to have been committed by a partnership or unincorporated association must be brought in the name of the partnership or association (and not in that of any of the partners or members), although this is not to be read as prejudicing any liability of a partner or officer under s 31(8) or s 32(7): ss 31(5), (9)(b), 32(4), (8)(b). For the purposes of such proceedings rules of court relating to the service of documents have effect as if the partnership were a body corporate (see note 13) (ss 31(6)(a), 32(5)(a)) and the Criminal Justice Act 1925 s 33 and the Magistrates' Courts Act 1980 Sch 3 (proceedings against corporations etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1161 et seq, 1260 et seq; **MAGISTRATES** vol 29(2) (Reissue) PARA 666) (and corresponding Scottish and Northern Ireland provisions) apply as they apply in relation to a body corporate (Serious Crime Act 2007 ss 31(6)(b), 32(5)(b)). As to the meanings of the terms used in ss 30-32 see note 13.

16 The court before which a person is convicted of an offence under the Serious Crime Act 2007 s 25 may order the forfeiture of anything in his possession at the time of the offence which the court considers to have been involved in the offence: s 26(1). Before making such an order in relation to anything the court must give an opportunity to make representations to any person (in addition to the convicted person) who claims to be the owner of that thing or otherwise to have an interest in it: s 26(2). Such an order may not be made so as to come into force at any time before there is no further possibility (ignoring any power to appeal out of time) of the order being varied or set aside on appeal: s 26(3). Where the court makes a forfeiture order under s 26(1) it may also make such other provision as it considers to be necessary for giving effect to the forfeiture (s 26(4)): such provision may, in particular, include provision relating to the retention, handling, destruction or other disposal of what is forfeited: s 26(5). Provision made by virtue of s 26 may be varied at any time by the court that made it: s 26(7).

17 The Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office may present a petition to the court for the winding up of a company, partnership or relevant body if the company, partnership or relevant body has been convicted of an offence under the Serious Crime Act 2007 s 25 in relation to a serious crime prevention order (s 27(1)(a)) and the Director concerned considers that it would be in the public interest for the company, partnership or (as the case may be) relevant body to be wound up (s 27(1)(b)). The Insolvency Act 1986 applies in relation to a petition under the Serious

Crime Act 2007 s 25 for the winding up of a company and the company's winding up as it applies in relation to a petition under the Insolvency Act 1986 s 124A (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 444) for the winding up of a company and the company's winding up (winding up on grounds of public interest), subject to specified modifications (see the Serious Crime Act 2007 s 27(2)-(4)): the Insolvency Act 1986 s 420 (power to make provision about insolvent partnerships: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1166) also applies to a partnership to which these provisions apply (see the Serious Crime Act 2007 s 27(5), (7)), and the appropriate Minister may by order provide for the Insolvency Act 1986 to apply, with such modifications as that person considers appropriate, in relation to a petition under this section for the winding up of a relevant body and the relevant body's winding up (see the Serious Crime Act 2007 s 27(6), (7)). The Secretary of State may by order make such modifications as he considers appropriate to the application of the Insolvency Act 1986 by virtue of the Serious Crime Act 2007 s 27(2): s 29(1)(a). Any modifications so made are in addition to the modifications made by s 27(3), (4): s 29(2). The Secretary of State may by order make such consequential or supplementary provision, applying with or without modifications any provision made by or under an enactment, as he considers appropriate in connection with s 27(2)-(4): s 29(3). An order made by virtue of s 27(5) or (6) or s 29(1) may, in particular, contain consequential or supplementary provision applying, with or without modifications, any provision made by or under an enactment: s 29(4).

No petition may be presented, or order to wind up made, by virtue of s 27 if an appeal against conviction for the offence concerned has been made and not finally determined (s 27(9)(a)) or the period during which such an appeal may be made has not expired (s 27(9)(b)): in deciding for these purposes whether an appeal is finally determined or whether the period during which an appeal may be made has expired, any power to appeal out of time is to be ignored (s 27(11)). No petition may be presented, or order to wind up made, by virtue of s 27 if the company, partnership or relevant body is already being wound up by the court: s 27(10).

For the purposes of s 27 (by virtue of s 27(12)):

517 (1) 'relevant body' means:

7. (a) a building society (within the meaning of the Building Societies Act 1986: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856);

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8. (b) an incorporated friendly society (within the meaning of the Friendly Societies Act 1992: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2082);

9

9. (c) an industrial and provident society;

10

10. (d) a limited liability partnership; or

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11. (e) such other description of person as may be specified by order made by the Secretary of State;

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518 (2) 'appropriate Minister' means the Treasury (in relation to a relevant body falling within paragraphs (a)-(c) of the definition of 'relevant body' above) and the Secretary of State (in relation to any other relevant body);

519 (3) 'company' has the same meaning as in the Insolvency Act 1986 Pts 1-7 (ss 1-251) (see s 251; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 3) but does not include a relevant body and, subject to this, does include an unregistered company within the meaning of Pt 5 (see s 220; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1147);

520 (4) 'court' has the same meaning as in the Insolvency Act 1986 Pts 1-7 (see s 251; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 4) but does not include a court in Northern Ireland;

521 (5) 'industrial and provident society' means a society registered under the Industrial and Provident Societies Act 1965 or a society deemed by virtue of s 4 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2396) to be so registered;

522 (6) 'partnership' does not include a relevant body; and

- 523 (7) the references to the Insolvency Act 1986 ss 124-125 include references to those sections as applied by s 221(1) (unregistered companies: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1148).

Corresponding provision is made for Northern Ireland: see the Serious Crime Act 2007 ss 25(3), 28, 29(1)(b), (2)-(4).

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351. Offences in relation to which serious crime prevention orders may be made.

For the purposes of the making of a serious crime prevention order on conviction¹ the offender is required to have been convicted of having committed a serious offence² in England and Wales³, that is to say, an offence under the law of England and Wales⁴ which, at the time when the court is considering the application or matter in question, is an offence⁵ of or involving:

- 1132 (1) drug trafficking⁶;
- 1133 (2) people trafficking⁷;
- 1134 (3) arms trafficking⁸;
- 1135 (4) prostitution and child sex⁹;
- 1136 (5) armed robbery¹⁰;
- 1137 (6) money laundering¹¹;
- 1138 (7) fraud¹²;
- 1139 (8) the public revenue¹³;
- 1140 (9) corruption and bribery¹⁴;
- 1141 (10) counterfeiting¹⁵;
- 1142 (11) blackmail¹⁶;
- 1143 (12) intellectual property¹⁷; or
- 1144 (13) environmental damage and control¹⁸,

or an offence which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified¹⁹. Certain offences inchoate to the listed offences are also applicable for these purposes²⁰.

1 Ie for the purposes of the Serious Crime Act 2007 Pt 1 (ss 1-43). As to the making of a serious crime prevention order on conviction see PARA 350. Serious crime prevention orders may also be made other than on conviction by the High Court: see s 1; and PARA 599.

2 As to whether a person has committed a serious offence see PARA 350 note 3.

3 See the Serious Crime Act 2007 s 19(1); and PARA 350.

4 Where the Serious Crime Act 2007 Sch 1 Pt 1 (see the text and notes 6-19) refers to offences which are offences under the law of England and Wales and another country, the reference is to be read as limited to the offences so far as they are offences under the law of England and Wales: Sch 1 para 16.

Sch 1 Pt 1 (apart from Sch 1 para 14(2): see the note 20) has effect, in its application to conduct before 30 October 2007 (ie the date on which the Serious Crime Act 2007 received the Royal Assent), as if the offences specified or described in Sch 1 Pt 1 included any corresponding offences under the law in force at the time of the conduct: Sch 1 para 15(1).

5 Ie an offence specified, or falling within a description specified, in the Serious Crime Act 2007 Sch 1 Pt 1 (see the text and notes 6-19): s 2(2)(a). The Secretary of State may by order amend Sch 1: s 4(4). At the date at which this volume states the law no such order had been made. Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(2)(a), Sch 1 Pt 2.

6 Ie an offence under:

- 524 (1) the Misuse of Drugs Act 1971 4(2) or (3) (unlawful production or supply of controlled drugs: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 249);
- 525 (2) s 5(3) (possession of controlled drug with intent to supply: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 252);
- 526 (3) s 8 (permitting etc certain activities relating to controlled drugs: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 255);
- 527 (5) s 20 (assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 260);
- 528 (6) the Customs and Excise Management Act 1979 s 50(2) or (3) (improper importation of goods: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 994);
- 529 (7) s 68(2) (exportation of prohibited or restricted goods: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029);
- 530 (8) s 170 (fraudulent evasion of duty etc: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178); or
- 531 (9) the Criminal Justice (International Co-operation) Act 1990 s 12 (manufacture or supply of a substance for the time being specified in Sch 2: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 773) or s 19 (using a ship for illicit traffic in controlled drugs: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 780).

See the Serious Crime Act 2007 Sch 1 para 1. Offences under the Customs and Excise Management Act 1979 are applicable for these purposes only if committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of the Misuse of Drugs Act 1971 s 3: Serious Crime Act 2007 Sch 1 para 1(2).

7 le an offence under:

- 532 (1) the Immigration Act 1971 s 25, 25A or 25B (assisting unlawful immigration etc: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 199);
- 533 (2) the Sexual Offences Act 2003 s 57, 58 or 59 (trafficking for sexual exploitation: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 228); or
- 534 (3) the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 4 (trafficking people for exploitation: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**).

See the Serious Crime Act 2007 Sch 1 para 2.

8 le an offence under the Customs and Excise Management Act 1979 s 68(2) (exportation of prohibited or restricted goods: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029) or s 170 (fraudulent evasion of duty etc: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178) if committed in connection with a firearm or ammunition, or an offence under the Firearms Act 1968 s 3(1) (dealing etc in firearms or ammunition by way of trade or business without being registered: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 636). As to the meanings of 'firearm' and 'ammunition' see the Firearms Act 1968 s 57; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 630, 634 (definitions applied by the Serious Crime Act 2007 Sch 1 para 3(3)) (see the Serious Crime Act 2007 Sch 1 para 3).

9 le an offence under the Sexual Offences Act 1956 s 33A (keeping a brothel used for prostitution: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 219) or under the Sexual Offences Act 2003 s 14 (arranging or facilitating commission of a child sex offence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 178), s 48 (causing or inciting child prostitution or pornography: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216), s 49 (controlling a child prostitute or a child involved in pornography: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216), s 50 (arranging or facilitating child prostitution or pornography: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216), s 52 (causing or inciting prostitution for gain: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217) or s 53 (controlling prostitution for gain: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217) (see the Serious Crime Act 2007 Sch 1 para 4).

10 le an offence under the Theft Act 1968 s 8(1) (robbery: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293) where the use or threat of force involves a firearm, an imitation firearm or an offensive weapon and an offence at common law of an assault with intent to rob where the assault involves a

firearm, imitation firearm or an offensive weapon (see the Serious Crime Act 2007 Sch 1 para 5). As to the meanings of 'firearm' and 'imitation firearm' see the Firearms Act 1968 s 57(1), (4); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 630, 631 (definitions applied by the Serious Crime Act 2007 Sch 1 para 5(3)). 'Offensive weapon' means any weapon to which the Criminal Justice Act 1988 s 141 (offensive weapons: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 702) applies: Serious Crime Act 2007 Sch 1 para 5(3). As to defendants charged with robbery but not with the possession of a firearm see *R v Benfield* [2003] EWCA Crim 2223, [2004] 1 Cr App Rep (S) 307, [2003] Crim LR 811 (explained in *R v Hylands* [2004] EWCA Crim 2999, [2005] 2 Cr App Rep (S) 135, [2005] Crim LR 154).

11 le an offence under the Proceeds of Crime Act 2002 s 327 (concealing etc criminal property: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 791), s 328 (facilitating the acquisition etc of criminal property by or on behalf of another: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 792) or s 329 (acquisition, use and possession of criminal property: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 793) (see the Serious Crime Act 2007 Sch 1 para 6).

12 le an offence under the Theft Act 1968 s 17 (false accounting: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293) or under the Fraud Act 2006 s 1 (fraud by false representation, failing to disclose information or abuse of position), s 6 (possession etc of articles for use in frauds), s 7 (making or supplying articles for use in frauds), s 9 (participating in fraudulent business carried on by sole trader etc), s 11 (obtaining services dishonestly) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**), or an offence at common law of conspiracy to defraud (see the Serious Crime Act 2007 Sch 1 para 7).

13 le an offence under the Customs and Excise Management Act 1979 s 170 (fraudulent evasion of duty etc: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178) so far as not falling within the offences under s 170 referred to in notes 6, 8, the Value Added Tax Act 1994 s 72 (fraudulent evasion of VAT etc: see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 316-320), the Finance Act 2000 s 144 (fraudulent evasion of income tax: see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1824) or the Tax Credits Act 2002 s 35 (tax credit fraud: see **SOCIAL SECURITY AND PENSIONS**), and an offence at common law of cheating in relation to the public revenue (see the Serious Crime Act 2007 Sch 1 para 8).

14 le an offence under the Public Bodies Corrupt Practices Act 1889 s 1 (corruption in public office: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 529), an offence which is the first or second offence under the Prevention of Corruption Act 1906 s 1(1) (corrupt transactions with agents other than those of giving or using false etc documents which intended to mislead principal: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 321), and an offence at common law of bribery (see the Serious Crime Act 2007 Sch 1 para 9).

15 le an offence under the Forgery and Counterfeiting Act 1981 s 14 (making counterfeit notes or coins: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 544), s 15 (passing etc counterfeit notes or coins: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 545), s 16 (having custody or control of counterfeit notes or coins: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 546) or s 17 (making or having custody or control of counterfeiting materials or implements: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 547) (see the Serious Crime Act 2007 Sch 1 para 10).

16 le an offence under the Theft Act 1968 s 21 (blackmail: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 308) or the Gangmasters (Licensing) Act 2004 s 12(1) or (2) (acting as a gangmaster other than under the authority of a licence, possession of false documents, etc: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1253) (see the Serious Crime Act 2007 Sch 1 para 11).

17 le an offence under the Copyright, Designs and Patents Act 1988 s 107(1)(a), (b), (d)(iv) or (e) (making, importing or distributing an article which infringes copyright: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 437), s 198(1)(a), (b) or (d)(iii) (making, importing or distributing an illicit recording: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 715) or s 297A (making or dealing etc in unauthorised decoders: see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 492), and an offence under the Trade Marks Act 1994 s 92(1), (2) or (3) (unauthorised use of trade mark etc: see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARAS 141-143) (see the Serious Crime Act 2007 Sch 1 para 12).

18 le an offence under the Salmon and Freshwater Fisheries Act 1975 s 1 (fishing for salmon, trout or freshwater fish with prohibited implements etc: see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 848-849, 857), the Wildlife and Countryside Act 1981 s 14 (introduction of new species etc: see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 921), the Environmental Protection Act 1990 s 33 (prohibition on unauthorised or harmful deposit, treatment or disposal etc of waste: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 655) or the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8 (purchase and sale etc of endangered species and provision of false statements and certificates: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1169; **ANIMALS** vol 2 (2008) PARA 965) (see the Serious Crime Act 2007 Sch 1 para 13).

19 Serious Crime Act 2007 s 2(2)(b). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(2)(b).

20 ie an offence of attempting or conspiring the commission of an offence specified or described in the Serious Crime Act 2007 Sch 1 Pt 1 (see the text and notes 5-19) (Sch 1 para 14(1)), an offence under Pt 2 (ss 44-67) (encouraging or assisting: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) where the offence (or one of the offences) which the person in question intends or believes would be committed is an offence specified or described in Sch 1 Pt 1 (Sch 1 para 14(2)), or an offence of aiding, abetting, counselling or procuring the commission of an offence specified or described in Sch 1 Pt 1 (Sch 1 para 14(3)). Schedule 1 para 14(2) has effect, in its application to conduct before 30 October 2007 or before 1 October 2008 (ie the date on which s 59 was brought into force by the Serious Crime Act 2007 (Commencement No 3) Order 2008, SI 2008/2504), as if the offence specified or described in that provision were an offence of inciting the commission of an offence specified or described in the Serious Crime Act 2007 Sch 1 Pt 1: Sch 1 para 15(2). The references in Sch 1 para 14(1)-(3) to offences specified or described in Sch 1 Pt 1 do not include the offence at common law of conspiracy to defraud: Sch 1 para 14(4).

UPDATE

351 Offences in relation to which serious crime prevention orders may be made

NOTE 18--Serious Crime Act 2007 Sch 1 para 13 amended: Marine and Coastal Access Act 2009 Sch 22 Pt 5.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(x) Serious Crime Prevention Orders/352. Involvement in serious crime.

352. Involvement in serious crime.

For the purposes of the making of a serious crime prevention order¹ a person has been involved in serious crime in England and Wales if he:

- 1145 (1) has committed a serious offence in England and Wales²;
- 1146 (2) has facilitated the commission by another person of a serious offence in England and Wales³; or
- 1147 (3) has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed)⁴.

'Involvement in serious crime in England and Wales' is any one or more of:

- 1148 (a) the commission of a serious offence in England and Wales⁵;
- 1149 (b) conduct which facilitates the commission by another person of a serious offence in England and Wales⁶;
- 1150 (c) conduct which is likely to facilitate the commission, by the person whose conduct it is or another person, of a serious offence in England and Wales (whether or not such an offence is committed)⁷.

A partnership is involved in serious crime in England and Wales⁸ if the partnership, or any of the partners, is so involved⁹.

1 le for the purposes of the Serious Crime Act 2007 Pt 1 (ss 1-43). As to the making of a serious crime prevention order on conviction see PARA 350. These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599).

2 Serious Crime Act 2007 s 2(1)(a). As to whether a person has committed a serious offence see PARA 350 note 3. Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(1)(a).

3 Serious Crime Act 2007 s 2(1)(b). In deciding for these purposes whether a person (the 'respondent') facilitates the commission by another person of a serious offence the court must ignore any act that the respondent can show to be reasonable in the circumstances (s 4(2)(a)) and, subject to this, his intentions, or any other aspect of his mental state, at the time (s 4(2)(b)). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(1)(b).

4 Serious Crime Act 2007 s 2(1)(c). In deciding for these purposes whether a person (the 'respondent') conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence is committed), the court must ignore any act that the respondent can show to be reasonable in the circumstances (s 4(3)(a)) and, subject to this, his intentions, or any other aspect of his mental state, at the time (s 4(3)(b)). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(1)(c).

5 Serious Crime Act 2007 s 2(3)(a). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(3)(a).

6 Serious Crime Act 2007 s 2(3)(b). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(3)(b).

7 Serious Crime Act 2007 s 2(3)(c). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 3(3)(c).

8 Or Northern Ireland or elsewhere: Serious Crime Act 2007 s 31(3).

9 Serious Crime Act 2007 s 31(3). 'Involvement in serious crime in England and Wales' (or Northern Ireland) is to be read accordingly: s 31(3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(x) Serious Crime Prevention Orders/353. Prohibitions, restrictions and requirements.

353. Prohibitions, restrictions and requirements.

A serious crime prevention order¹ may contain such prohibitions, restrictions or requirements² and such other terms³ as the court considers appropriate for the purpose of protecting the public⁴ by preventing, restricting or disrupting involvement by the person concerned in serious crime⁵. Examples of prohibitions, restrictions or requirements that may be imposed⁶ on individuals (including partners in a partnership) by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to:

- 1151 (1) an individual's financial, property or business dealings or holdings⁷;
- 1152 (2) an individual's working arrangements⁸;
- 1153 (3) the means by which an individual communicates or associates with others, or the persons with whom he communicates or associates⁹;
- 1154 (4) the premises¹⁰ to which an individual has access¹¹;
- 1155 (5) the use of any premises or item by an individual¹²;
- 1156 (6) an individual's travel (whether within the United Kingdom¹³, between the United Kingdom and other places or otherwise)¹⁴; and
- 1157 (7) an individual's private dwelling¹⁵.

Examples of prohibitions, restrictions or requirements that may be imposed¹⁶ on bodies corporate, partnerships and unincorporated associations by serious crime prevention orders include prohibitions or restrictions on, or requirements in relation to:

- 1158 (a) financial, property or business dealings or holdings of such persons¹⁷;
- 1159 (b) the types of agreements to which such persons may be a party¹⁸;
- 1160 (c) the provision of goods or services by such persons¹⁹;
- 1161 (d) the premises to which such persons have access²⁰;
- 1162 (e) the use of any premises or item by such persons²¹; and
- 1163 (f) the employment of staff by such persons²².

Examples of requirements that may be imposed on any persons by serious crime prevention orders include a requirement on a person to answer specified or described questions, or provide specified or described information²³, and a requirement on a person to produce specified or described documents²⁴. A serious crime prevention order may not include specified terms which restrict the freedom of a person providing information society services²⁵, terms which impose particular liabilities on service providers of intermediary services²⁶, or terms which impose certain monitoring obligations on service providers²⁷.

1 As to the making of a serious crime prevention order on conviction see PARA 350. These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599).

2 Serious Crime Act 2007 ss 1(3)(a), 19(5)(a).

3 Serious Crime Act 2007 ss 1(3)(b), 19(5)(b). See also s 34; and the text and notes 25-27.

4 As to the meaning of 'the public' see PARA 350 note 8.

5 Serious Crime Act 2007 ss 1(3), 19(5). As to involvement by a person in serious crime (which for these purposes may be in England and Wales or (as the case may be) Northern Ireland) see PARA 352. This requirement need not be satisfied if the order proposed to be made or varied contains terms requiring the subject of the order to pay the costs of monitoring compliance with the order (ie under s 39(4), (5)): see s 39(6); and PARA 358 note 7.

6 The Serious Crime Act 2007 s 5 (see the text and notes 7-24) contains examples of the type of provision that may be made by a serious crime prevention order but it does not limit the type of provision that may be made by such an order: s 5(1). Examples of prohibitions, restrictions or requirements that may be imposed by serious crime prevention orders in England and Wales include prohibitions, restrictions or requirements in relation to places other than England and Wales: s 5(2).

7 Serious Crime Act 2007 s 5(3)(a).

8 Serious Crime Act 2007 s 5(3)(b).

9 Serious Crime Act 2007 s 5(3)(c).

10 'Premises' includes any land, vehicle, vessel, aircraft or hovercraft: Serious Crime Act 2007 s 5(7).

11 Serious Crime Act 2007 s 5(3)(d).

12 Serious Crime Act 2007 s 5(3)(e).

13 As to the meaning of 'United Kingdom' see PARA 9 note 2.

14 Serious Crime Act 2007 s 5(3)(f).

15 Serious Crime Act 2007 s 5(6). These include, for example, prohibitions or restrictions on, or requirements in relation to, where an individual may reside: s 5(6).

16 See note 6.

17 Serious Crime Act 2007 s 5(4)(a).

18 Serious Crime Act 2007 s 5(4)(b).

19 Serious Crime Act 2007 s 5(4)(c).

20 Serious Crime Act 2007 s 5(4)(d).

21 Serious Crime Act 2007 s 5(4)(e).

22 Serious Crime Act 2007 s 5(4)(f).

23 Serious Crime Act 2007 s 5(5)(a). A person who complies with a requirement imposed by a serious crime prevention order to answer questions, provide information or produce documents (see note 24) does not breach any obligation of confidence or any other restriction on making the disclosure concerned (however imposed): s 38(1). A serious crime prevention order may not require a person to answer questions, or provide information, orally: ss 11, 38(2). The order may specify that these requirements are to be complied with at a time, within a period or at a frequency (s 5(5)(a)(i)), at a place (s 5(5)(a)(ii)), in a form and manner (s 5(5)(a)(iii)) and to a law enforcement officer or description of law enforcement officer (s 5(5)(a)(iv)), notified to the person by a law enforcement officer specified or described in the order. 'Law enforcement officer' means a constable, a member of the staff of the Serious Organised Crime Agency who is for the time being designated under the Serious Organised Crime and Police Act 2005 s 43 (see **POLICE** vol 36(1) (2007 Reissue) PARA 470), an officer of Revenue and Customs or a member of the Serious Fraud Office: Serious Crime Act 2007 s 5(7). A serious crime prevention order which provides for an authorised monitor (see s 39; and PARA 358) may, for the purpose of enabling the performance of monitoring services, impose requirements of the type mentioned in s 5(5) as if the references in s 5(5)(a)(iv) and s 5(5)(b)(iv) to a law enforcement officer included references to an authorised monitor: s 39(3).

A serious crime prevention order may not require a person to answer any privileged question (ie a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court), to provide any privileged information (ie information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings) or to produce any privileged document (ie a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings) (s 12(1)-(4)), although this does not prevent an order from requiring a lawyer to provide the name and address of a client of his (s 12(5)). A person also may not be required to produce any excluded material as defined by the Police and Criminal Evidence Act 1984 s 11 (see **CRIMINAL**

LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875) (Serious Crime Act 2007 s 13(1)(a)) or to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on a banking business (s 13(2)) unless (1) the person to whom the obligation of confidence is owed consents to the disclosure or production (s 13(3)); or (2) the order contains a requirement to disclose information, or produce documents, of this kind or to disclose specified information which is of this kind or to produce specified documents which are of this kind (s 13(4)). A person also may not be required to answer any question, to provide any information or to produce any document if the disclosure concerned is prohibited under any other enactment: s 14(1). For this purpose 'enactment' includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made; and 'subordinate legislation' has the same meaning as in the Interpretation Act 1978 (see **STATUTES** vol 44(1) (Reissue) PARA 1499) and also includes an instrument made under an Act of the Scottish Parliament or Northern Ireland legislation: Serious Crime Act 2007 s 14(2). A statement made by a person in response to a requirement imposed by a serious crime prevention order may not be used in evidence against him in any criminal proceedings unless:

535 (1) the criminal proceedings relate to an offence under s 25 (see PARA 350) (s 15(1), (2)); or

536 (2) (a) the criminal proceedings relate to another offence (s 15(3)(a)); (b) the person who made the statement gives evidence in the criminal proceedings (s 15(3)(b)); (c) in the course of that evidence, the person makes a statement which is inconsistent with the statement made in response to the requirement imposed by the order (s 15(3)(c)); and (d) in the criminal proceedings evidence relating to the statement made in response to the requirement imposed by the order is adduced, or a question about it is asked, by the person or on his behalf (s 15(3)(d)).

24 Serious Crime Act 2007 s 5(5)(b). See note 23. 'Document' means anything in which information of any description is recorded (whether or not in legible form): s 5(7). Any reference in Pt 1 to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form: s 5(8). The order may specify that these requirements are to be complied with at a time, within a period or at a frequency (s 5(5)(b)(i)), at a place (s 5(5)(b)(ii)), in a manner (s 5(5)(b)(iii)) and to a law enforcement officer or description of law enforcement officer (s 5(5)(b)(iv)), notified to the person by a law enforcement officer specified or described in the order. As to the excluded material see note 23.

A law enforcement officer may take and retain copies of, or extracts from, any document produced to a law enforcement officer in pursuance of a serious crime prevention order (s 41(1)(a)) and may retain any document so produced for as long as he considers that it is necessary to retain it (rather than any copy of it) for the purposes for which the document was obtained (s 41(1)(b)). A law enforcement officer may retain any document produced to a law enforcement officer in pursuance of a serious crime prevention order until the conclusion of any legal proceedings if he has reasonable grounds for believing that the document may have to be produced for the purposes of those proceedings (s 41(2)(a)) and might be unavailable unless retained (s 41(2)(b)).

25 See the Serious Crime Act 2007 s 34(1), which provides that a serious crime prevention order may not include terms which restrict the freedom of a service provider (ie a person providing an information society service) who is established in an EEA state other than the United Kingdom to provide information society services in relation to an EEA state unless:

537 (1) the court concerned considers that the terms are necessary for the objective of protecting the public by preventing, restricting or disrupting involvement in serious crime in England and Wales (s 34(2)(a)(i)), relate to an information society service which prejudices that objective or presents a serious and grave risk of prejudice to it (s 34(2)(b)), and are proportionate to that objective (s 34(2)(c));

538 (2) a law enforcement officer has requested the EEA state in which the service provider is established to take measures which the law enforcement officer considers to be of equivalent effect under the law of the EEA state to the terms and the EEA state has failed to take the measures (s 34(3)(a)); and

539 (3) a law enforcement officer has notified the Commission of the European Communities and the EEA state of the intention to seek an order containing the terms and the terms (s 34(3)(b)).

It does not matter for the purposes of s 34(3) whether the request or notification is made before or after the making of the application for the order: s 34(4).

For the purposes of s 34 a service provider is established in a particular EEA state if he effectively pursues an economic activity using a fixed establishment in that EEA state for an indefinite period and he is a national of an EEA state or a company or firm mentioned in the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 48: Serious Crime Act 2007 s 34(7)(a). The presence or use

in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider: s 34(7)(b). Where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment where the service provider has the centre of his activities relating to the service: s 34(7)(c). References to a person being established in an EEA state are to be read accordingly: s 34(7).

For the purposes of s 34 'information society services' has the meaning given in EC Council Directive 2000/31 (OJ L178, 17.7.2000, p 1) on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (the 'E-Commerce Directive'), art 2(a) (which refers to EC Council Directive 98/34 (OJ L204, 21.7.98, p 37) laying down a procedure for the provision of information in the field of technical standards and regulations, art 1(2)) and is summarised in recital 17 of the E-Commerce Directive as covering 'any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service': Serious Crime Act 2007 s 34(8).

26 See the Serious Crime Act 2007 s 34(5), which provides that a serious crime prevention order may not include terms which impose liabilities on service providers of intermediary services so far as the imposition of those liabilities would result in a contravention of art 12, 13 or 14 of the E-Commerce Directive (see note 25) (various protections for service providers of intermediary services). For these purposes 'intermediary services' means (by virtue of the Serious Crime Act 2007 s 34(8)-(10)) an information society service which:

- 540 (1) consists in the provision of access to a communication network or the transmission in a communication network of information provided by a recipient of the service (for which purpose the provision of access to a communication network and the transmission of information in a communication network includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is for the sole purpose of carrying out the transmission in the network (although this does not apply if the information is stored for longer than is reasonably necessary for the transmission));
- 541 (2) consists in the transmission in a communication network of information which is provided by a recipient of the service and is the subject of automatic, intermediate and temporary storage which is solely for the purpose of making the onward transmission of the information to other recipients of the service at their request more efficient; or
- 542 (3) consists in the storage of information provided by a recipient of the service,

and 'recipient', in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible (s 34(8)).

27 See the Serious Crime Act 2007 s 34(6), which provides that a serious crime prevention order may not include terms which impose a general obligation on service providers of intermediary services covered by arts 12, 13, 14 of the E-Commerce Directive to monitor the information which they transmit or store when providing those services or actively to seek facts or circumstances indicating illegal activity when providing those services.

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354. Duration of orders.

A serious crime prevention order¹ must specify when it is to come into force and when it is to cease to be in force², although an order is not to be in force for more than five years beginning with the coming into force of the order³. An order can specify different times for the coming into force, or ceasing to be in force, of different provisions of the order⁴.

The fact that an order, or any provision of an order, ceases to be in force does not prevent the court from making a new order to the same or similar effect⁵: a new order may be made in anticipation of an earlier order or provision ceasing to be in force⁶.

1 As to the making of a serious crime prevention order on conviction see PARA 350. These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599).

2 Serious Crime Act 2007 s 16(1).

3 Serious Crime Act 2007 s 16(2).

4 Serious Crime Act 2007 s 16(3). Where it specifies different times in accordance with s 16(3) the order must specify when each provision is to come into force and cease to be in force (s 16(4)(a)) and is not to be in force for more than five years beginning with the coming into force of the first provision of the order to come into force (s 16(4)(b)).

5 Serious Crime Act 2007 s 16(5).

6 Serious Crime Act 2007 s 16(6).

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355. Variation and discharge of orders by High Court.

The High Court in England and Wales may¹ vary a serious crime prevention order² if it has reasonable grounds to believe that the terms of the order as varied would protect the public³ by preventing, restricting or disrupting involvement, by the person who is the subject of the order, in serious crime in England and Wales⁴. An application for variation may be made by the relevant applicant authority⁵, the person who is the subject of the order⁶ or any other person⁷.

The High Court in England and Wales may also⁸ discharge a serious crime prevention order in England and Wales⁹, an application for which may be made by the relevant applicant authority¹⁰, the person who is the subject of the order¹¹ or any other person¹².

Provision is made for the making of representations by affected parties¹³. An appeal may be made to the Court of Appeal in relation to a decision of the High Court to vary or discharge or not to vary or discharge a serious crime prevention order¹⁴.

1 Rely on an application under the Serious Crime Act 2007 s 17 (see the text and notes 2-7). As to the conduct of proceedings see PARA 359.

2 As to the making of a serious crime prevention order on conviction see PARA 350. These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599). As to the extent to which a person is bound by a variation see s 10; and PARA 350 note 13.

3 As to the meaning of 'the public' see PARA 350 note 8.

4 Serious Crime Act 2007 s 17(1). As to the 'subject' of a serious crime prevention order see PARA 350 note 2. Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 17(2). This requirement need not be satisfied if the order proposed to be varied contains terms requiring the subject of the order to pay the costs of monitoring compliance with the order (ie under s 39(4), (5)); see s 39(6); and PARA 358 note 7.

5 Serious Crime Act 2007 s 17(3)(a). As to the meaning of 'relevant applicant authority' see PARA 350 note 13. A variation on an application under s 17(3)(a) may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by s 16(2), (4)(b) (see PARA 354)): s 17(8).

6 Serious Crime Act 2007 s 17(3)(b)(i). The court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order: s 17(4).

7 Serious Crime Act 2007 s 17(3)(b)(ii). The court must not entertain an application by any person falling within s 17(3)(b)(ii) unless it considers that the person is significantly adversely affected by the order (s 17(5)(a)), condition A or B (see below) is met (s 17(5)(b)), and the application is not for the purpose of making the order more onerous on the person who is the subject of it (s 17(5)(c)). Condition A is that the person falling within s 17(3)(b)(ii) has, on an application under s 9 (see PARAS 599, 355-356), been given an opportunity to make representations (s 17(6)(a)(i)), or has made an application otherwise than under s 9 (s 17(6)(a)(ii)), in earlier proceedings in relation to the order (whether before the High Court or the Crown Court), and there has been a change of circumstances affecting the order (s 17(6)(b)). Condition B is that the person falling within s 17(3)(b)(ii) has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court) (s 17(7)(a)) and it was reasonable in all the circumstances for the person not to have done so (s 17(7)(b)).

8 Rely on an application under the Serious Crime Act 2007 s 18 (see the text and notes 9-12).

9 Serious Crime Act 2007 s 18(1)(a). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 18(1)(b).

10 Serious Crime Act 2007 s 18(2)(a).

11 Serious Crime Act 2007 s 18(2)(b)(i). The court must not entertain an application by the person who is the subject of the order unless it considers that there has been a change of circumstances affecting the order: s 18(3).

12 Serious Crime Act 2007 s 18(2)(b)(ii). The court must not entertain an application by any person falling within s 18(2)(b)(ii) unless it considers that the person is significantly adversely affected by the order (s 18(4)(a)) and condition A or B (see below) is met (s 18(4)(b)). Condition A is that the person has, on an application under s 9 (see PARAS 599, 355-356), been given an opportunity to make representations (s 18(5)(a)(i)), or has made an application otherwise than under s 9 (s 18(5)(a)(ii)), in earlier proceedings in relation to the order (whether before the High Court or the Crown Court), and there has been a change of circumstances affecting the order (s 18(5)(b)). Condition B is that the person has not made an application of any kind in earlier proceedings in relation to the order (whether before the High Court or the Crown Court) (s 18(6)(a)) and it was reasonable in all the circumstances for the person not to have done so (s 18(6)(b)).

13 The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the variation or discharge of a serious crime prevention order if it considers that the variation or discharge of the order, or a decision not to vary or discharge it, would be likely to have a significant adverse effect on that person: Serious Crime Act 2007 s 9(2), (3).

14 Serious Crime Act 2007 s 23(1)(b), (c). The appeal may be brought by any person who was given an opportunity to make representations in the proceedings concerned by virtue of s 9(2) or s 9(3)) (see note 13): s 23(1). This provision is without prejudice to the rights of other persons to make appeals, by virtue of the Senior Courts Act 1981 s 16 (see **COURTS** vol 10 (Reissue) PARA 639) in relation to any judgments or orders of the High Court about serious crime prevention orders: Serious Crime Act 2007 s 23(2). As to the Senior Courts Act 1981 see PARA 36 note 18.

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356. Variation of orders on breach or conviction.

The Crown Court may vary a serious crime prevention order¹ where it is dealing with a person who is the subject of such an order² and who has been convicted of having committed a serious offence in England and Wales³ or of having breached a serious crime prevention order⁴. The court may so vary an order only on an application by the relevant applicant authority⁵ and only if it has reasonable grounds to believe that the terms of the order as varied would protect the public⁶ by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales⁷, and a variation must not be made except in addition to a sentence imposed in respect of the offence concerned⁸ or in addition to an order discharging the person conditionally⁹.

1 As to the making of a serious crime prevention order on conviction see PARA 350 (noting in particular, as to the powers of the Crown Court under these provisions, PARA 350 note 1). These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599). The fact that a serious crime prevention order has been made or varied by the High Court does not prevent it from being varied by the Crown Court in accordance with Pt 1 (ss 1-43) (s 22(1)). A decision by the Crown Court not to vary a serious crime prevention order under s 20 or s 21 (see the text and notes 2-9) does not prevent a subsequent application to the High Court (see PARA 355) for a variation of the order in consequence of the same offence (s 22(4)). As to the extent to which a person is bound by a variation see s 10; and PARA 350 note 13. As to appeals from decisions of the Crown Court see PARA 357.

2 Serious Crime Act 2007 ss 20(2)(a), 21(2)(a). As to the 'subject' of a serious crime prevention order see PARA 350 note 2. The requirements set out in ss 20(2), 21(2) need not be satisfied if the order proposed to be varied contains terms requiring the subject of the order to pay the costs of monitoring compliance with the order (ie under s 39(4), (5)): see s 39(6); and PARA 358 note 7.

3 Serious Crime Act 2007 s 20(1). The Crown Court's powers under these provisions arise where the court is dealing with a person who has been convicted by or before a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court to be dealt with (s 20(1)(a)), or who has been convicted by or before the Crown Court of having committed a serious offence in England and Wales (s 20(1)(b)), and the court may exercise these powers in addition to dealing with the person in relation to the offence (s 20(2)(b)). As to whether a person has committed a serious offence see PARA 350 note 3. Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 20(3), (4).

4 Serious Crime Act 2007 s 21(1). The Crown Court's powers under these provisions arise where the court is dealing with a person who has been convicted by or before a magistrates' court of having committed an offence under s 25 (see PARA 350) in relation to a serious crime prevention order and has been committed to the Crown Court to be dealt with (s 21(1)(a)) or who has been convicted by or before the Crown Court of having committed an offence under s 25 in relation to a serious crime prevention order (s 21(1)(b)), and the court may exercise these powers in addition to dealing with the person in relation to the offence (s 21(2)(b)). Corresponding provision is made in connection with the making of serious crime prevention orders in Northern Ireland: see s 21(3), (4).

5 Serious Crime Act 2007 ss 20(5), 21(5). As to the meaning of 'relevant applicant authority' see PARA 350 note 13.

6 As to the meaning of 'the public' see PARA 350 note 8.

7 Serious Crime Act 2007 ss 20(2), 21(2). As to involvement by a person in serious crime (which for these purposes may be in England and Wales or (as the case may be) Northern Ireland) see PARA 352. A variation may include an extension of the period during which the order, or any provision of it, is in force (subject to the original limits imposed on the order by s 16(2), (4)(b) (see PARA 354)): ss 20(7), 21(7). The Crown Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it

arising by virtue of s 20 or s 21 if it considers that the variation of the serious crime prevention order concerned (or a decision not to vary it) would be likely to have a significant adverse effect on that person: s 9(4).

8 Serious Crime Act 2007 ss 20(6)(a), 21(6)(a).

9 Serious Crime Act 2007 ss 20(6)(b), 21(6)(b). A variation of a serious crime prevention order may be made as mentioned in s 20(6)(b) or s 21(6)(b) in spite of anything in the Powers of Criminal Courts (Sentencing) Act 2000 ss 12, 14 (which relate to orders discharging a person absolutely or conditionally and their effect: see PARAS 40, 41); Serious Crime Act 2007 s 36(6).

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357. Appeals from decisions of Crown Court.

An appeal against a decision of the Crown Court in relation to a serious crime prevention order¹ may be made to the Court of Appeal² by the person who is the subject of the order³ or the relevant applicant authority⁴. An appeal may also be made to the Court of Appeal by an affected party⁵ in relation to a decision of the Crown Court to make a serious crime prevention order⁶ or to vary, or not to vary, such an order⁷. Any such appeal lies only with the leave of the Court of Appeal⁸ unless the judge who made the decision grants a certificate that the decision is fit⁹ for appeal¹⁰. An appeal against a decision of the Court of Appeal on an appeal to that court under these provisions¹¹ may be made to the Supreme Court¹² by any person who was a party to the proceedings before the Court of Appeal¹³; any such an appeal lies only with the leave of the Court of Appeal or the Supreme Court¹⁴.

Appeals under these provisions are governed by rules made by the Secretary of State¹⁵.

1 As to the making of a serious crime prevention order by the Crown Court see PARA 350 et seq (noting in particular, as to the powers of the Crown Court under these provisions, PARA 350 note 1).

2 Subject to any rules of court made under the Senior Courts Act 1981 s 53(1) (distribution of business between civil and criminal divisions: see **COURTS** vol 10 (Reissue) PARA 639), the criminal division of the Court of Appeal is the division which is to exercise jurisdiction in relation to an appeal under these provisions from a decision of the Crown Court in the exercise of its jurisdiction in England and Wales under the Serious Crime Act 2007 Pt 1 (ss 1-43): s 24(5). As to the Senior Courts Act 1981 see PARA 36 note 18.

3 Serious Crime Act 2007 s 24(1)(a). As to the 'subject' of a serious crime prevention order see PARA 350 note 2. The power to make an appeal to the Court of Appeal under s 24(1)(a) operates instead of any power for the person who is the subject of the order to make an appeal against a decision of the Crown Court in relation to a serious crime prevention order by virtue of the Criminal Appeal Act 1968 s 9 or s 10 (see PARAS 46, 47): Serious Crime Act 2007 s 24(11)(a).

4 Serious Crime Act 2007 s 24(1)(b). As to the meaning of 'relevant applicant authority' see PARA 350 note 13.

5 Ie any person who was given an opportunity to make representations in the proceedings concerned by virtue of the Serious Crime Act 2007 s 9(4) (see PARA 356).

6 Serious Crime Act 2007 s 24(2)(a). See note 1.

7 Serious Crime Act 2007 s 24(2)(b).

8 Serious Crime Act 2007 s 24(3).

9 Ie under the Serious Crime Act 2007 s 24.

10 Serious Crime Act 2007 s 24(4).

11 Ie under the Serious Crime Act 2007 s 24(1), (2) (see the text and notes 1-7).

12 As to the Supreme Court see PARA 53 note 1.

13 Serious Crime Act 2007 s 24(6). The Criminal Appeal Act 1968 s 33(3) (limitation on appeal from criminal division of the Court of Appeal: England and Wales: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966) does not prevent an appeal to the Supreme Court under the Serious Crime Act 2007 s 24(6): s 24(12).

14 Serious Crime Act 2007 s 24(7). Such leave must not be granted unless it is certified by the Court of Appeal that a point of law of general public importance is involved in the decision (s 24(8)(a)) and it appears to the Court of Appeal or (as the case may be) the Supreme Court that the point is one which ought to be considered by the Supreme Court (s 24(8)(b)).

15 See the Serious Crime Act 2007 (Appeals under Section 24) Order 2008, SI 2008/1863. That order was made under the Serious Crime Act 2007 s 24(9), (10), under which it is provided that the Secretary of State may for the purposes of s 24 by order make provision corresponding (subject to any specified modifications) to that made by or under an enactment and relating to appeals to the Court of Appeal under the Criminal Appeal Act 1968 Pt 1 (ss 1-32) (or corresponding Northern Ireland provision) (Serious Crime Act 2007 s 24(9)(a)), appeals from any decision of the Court of Appeal on appeals falling within s 24(9)(a) (s 24(9)(b)) or any matter connected with or arising out of appeals falling within s 24(9)(a) or (b) (s 24(9)(c)). Such an order under may, in particular, make provision about the payment of costs: s 24(10).

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358. Monitoring of compliance with orders made against corporations, partnerships and associations.

A serious crime prevention order¹ against a body corporate, partnership or unincorporated association² may authorise a law enforcement agency³ to enter into arrangements with a specified person⁴ or any person who falls within a specified description of persons⁵ to perform specified monitoring services⁶ or monitoring services of a specified description (an 'authorised monitor')⁷. A serious crime prevention order which provides for an authorised monitor may require any body corporate, partnership or unincorporated association which is the subject of the order⁸ to pay to the law enforcement agency concerned some or all of the costs incurred by the agency under the arrangements with the authorised monitor⁹.

1 As to the making of a serious crime prevention order on conviction see PARA 350. These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599).

2 As to the making of serious crime prevention orders against bodies corporate, partnerships and unincorporated associations see the Serious Crime Act 2007 ss 10, 30-32; and PARA 350 notes 13-15. As to compliance with orders made against corporations, partnerships and associations see ss 39, 40; and PARA 358.

3 I.e., in England and Wales, a police authority, the Serious Organised Crime Agency, the Commissioners for Her Majesty's Revenue and Customs or the Director of the Serious Fraud Office: Serious Crime Act 2007 ss 39(10), 40(8).

4 Serious Crime Act 2007 s 39(1)(a). 'Specified', in relation to a serious crime prevention order, means specified in the order: s 39(10).

5 Serious Crime Act 2007 s 39(1)(b).

6 'Monitoring services' means analysing some or all information received in accordance with a serious crime prevention order, reporting to a law enforcement officer as to whether, on the basis of the information and any other information analysed for this purpose, the subject of the order appears to be complying with the order or any part of it, and any related services: Serious Crime Act 2007 s 39(10). As to the meaning of 'law enforcement officer' see PARA 353 note 23.

7 Serious Crime Act 2007 s 39(1). Nothing in s 39 affects the ability of law enforcement agencies to enter into arrangements otherwise than in accordance with an authorisation under s 39: s 39(9). A person with whom the agency has entered into arrangements in accordance with an authorisation under s 39(1) (see the text and notes 1-5) is known for these purposes as an authorised monitor: s 39(2). A law enforcement agency must inform the subject of a serious crime prevention order which provides for an authorised monitor of the name of, and an address for, any person with whom the agency has entered into arrangements in accordance with the authorisation in the order: s 39(8). As to the role of authorised monitors see also s 39(3); and PARA 353 note 23. The statutory tests for making or varying a serious crime prevention order (see ss 1(1)(b), (3), 17(1), (2), 19(2), (5), 20(2), 21(2); and PARAS 350, 353, 355, 356, 599) do not operate in relation to an order so far as the order contains terms of the kind envisaged by s 39(4), (5) (or by s 39(1) for the purposes of s 39(4), (5)): s 39(6).

8 As to the 'subject' of a serious crime prevention order see PARA 350 note 2.

9 Serious Crime Act 2007 s 39(4). Any such order must specify the period, or periods, within which payments are to be made (s 39(5)(a)), may require the making of payments on account (s 39(5)(b)) and may include other terms about the calculation or payment of costs (s 39(5)(c)): however a court must not include in a serious crime prevention order (whether initially or on a variation) terms of the kind envisaged by s 39(4) or (5) unless it considers that it is appropriate to do so having regard to all the circumstances including, in particular the means of the body corporate, partnership or unincorporated association concerned (s 39(7)(a)), the expected

size of the costs (s 39(7)(b)) and the effect of the terms on the ability of any body corporate, partnership or unincorporated association which is carrying on business to continue to do so (s 39(7)(c)).

The Secretary of State may by order make provision (which may, in particular, include provision about appeals) about the practice and procedure for determining the amount of any costs payable by virtue of s 39(4), (5) and any interest payable in respect of those costs: s 40(1), (2). Where any amounts required to be paid by virtue of s 39(4), (5) have not been paid within a required period, the law enforcement agency concerned must take reasonable steps (as determined by the Secretary of State by order) to recover them and any interest payable in respect of them (s 40(3), (4)): any amounts which have not been recovered despite the taking of the reasonable steps are recoverable as if due to the law enforcement agency concerned by virtue of a civil order or judgment (s 40(5)).

Where any amounts required to be paid by virtue of s 39(4), (5) are, in the case of an order of the Crown Court, not paid within a required period, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (interest on civil judgment debts: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1307): Serious Crime Act 2007 s 40(6).

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359. Functions of applicant authorities.

The functions¹ of the Director of Public Prosecutions², the Director of Revenue and Customs Prosecutions³ and the Director of the Serious Fraud Office are exercisable under the superintendence of the Attorney General⁴ and may be delegated⁵. Those functions are:

- 1164 (1) to have the conduct of applications for serious crime prevention orders⁶ in England and Wales or for their variation or discharge⁷;
- 1165 (2) to appear on any application made⁸ by another person for the variation or discharge of a serious crime prevention order in England and Wales⁹;
- 1166 (3) to have the conduct of, or (as the case may be) appear in, any other proceedings¹⁰ in connection with serious crime prevention orders¹¹;
- 1167 (4) to give advice in connection with any proceedings or possible proceedings in connection with serious crime prevention orders¹²; and
- 1168 (5) to do anything for the purposes of, or in connection with, the functions referred to above¹³.

1 le under the Serious Crime Act 2007 Pt 1 (ss 1-43) (see PARA 350 et seq).

2 The Code for Crown Prosecutors issued under the Prosecution of Offences Act 1985 s 10 (guidelines for Crown Prosecutors: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1083) may include guidance by the Director on general principles to be applied by Crown Prosecutors in determining in any case:

- 543 (1) whether to make an application for a serious crime prevention order in England and Wales or for the variation or discharge of such an order (Serious Crime Act 2007 Sch 2 para 4(1)(a));
- 544 (2) whether to present a petition by virtue of s 27 (see PARA 350) (Sch 2 para 4(1)(b)); or
- 545 (3) where such an application has been made or petition presented, whether the proceedings concerned should be discontinued (Sch 2 para 4(1)(c)),

and the Prosecution of Offences Act 1985 s 10(2), (3) (power to make alterations in the Code and duty to set out alterations in Director's report: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1083) are to be read accordingly (Serious Crime Act 2007 Sch 2 para 4(2)). As to the variation and discharge of serious crime prevention orders see PARAS 355, 356.

The Prosecution of Offences Act 1985 s 14 (power of Attorney General to make regulations about fees of legal representatives and costs and expenses of witnesses: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1083) applies in relation to proceedings in connection with serious crime prevention orders and attendance for the purposes of such cases as it applies in relation to criminal proceedings and attendance for the purposes of such cases: Serious Crime Act 2007 Sch 2 para 5.

Corresponding provision is made in connection with the functions of the Director of Public Prosecutions for Northern Ireland: see Sch 2 para 16.

In Sch 2 references to having the conduct of proceedings include references to starting or discontinuing proceedings: Sch 2 para 21.

3 The Director of Revenue and Customs Prosecutions must have regard to the Code for Crown Prosecutors issued under the Prosecution of Offences Act 1985 s 10 so far as it applies in relation to serious crime prevention orders in England and Wales, and petitions and proceedings by virtue of the Serious Crime Act 2007 s 27, by virtue of Sch 2 para 4 (see note 2): Sch 2 para 9. The Commissioners for Revenue and Customs Act 2005 s 21 (disclosure to prosecuting authority: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 921) has effect as if the purpose mentioned in s 21(1)(b) included the purpose of enabling the Director to exercise his functions under the Serious Crime Act 2007 Pt 1: Sch 2 para 10. The Commissioners for Revenue and Customs

Act 2005 s 41(1) (disclosure of information to Director: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1196) applies in relation to a purpose connected with a serious crime prevention order or possible serious crime prevention order as it applies in relation to a purpose connected with a specified investigation or prosecution: Serious Crime Act 2007 Sch 2 para 11.

4 Serious Crime Act 2007 Sch 2 paras 3, 8, 14. The Criminal Justice Act 1987 Sch 1 para 8 (power of Attorney General to make regulations about fees of counsel and costs and expenses of witnesses: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1095) applies in relation to proceedings in connection with serious crime prevention orders and attendance for the purposes of such cases as it applies in relation to criminal proceedings and attendance for the purposes of such cases: Serious Crime Act 2007 Sch 2 para 15.

5 The Director of Public Prosecutions may, to such extent as he may decide, delegate the exercise of his functions under the Serious Crime Act 2007 Pt 1 to a Crown Prosecutor (Sch 2 para 2(1)) and references in Pt 1 to the Director are accordingly to be read, so far as necessary for this purpose, as references to the Director or any Crown Prosecutor (Sch 2 para 2(2)). The Director of Revenue and Customs Prosecutions may, to such extent as he may decide, delegate the exercise of his functions under Pt 1 to a Revenue and Customs Prosecutor (Sch 2 para 7(1)), and references in Pt 1 to the Director are accordingly to be read, so far as necessary for this purpose, as references to the Director or any Revenue and Customs Prosecutor (Sch 2 para 7(2)). The Director of the Serious Fraud Office may, to such extent as he may decide, delegate the exercise of his functions under Pt 1 to a member of the Serious Fraud Office designated under the Criminal Justice Act 1987 s 1(7) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1089) (Serious Crime Act 2007 Sch 2 para 13(1)), and references in Pt 1 to the Director are accordingly to be read, so far as necessary for this purpose, as references to the Director or any member of the Serious Fraud Office so designated (Sch 2 para 13(2)).

6 As to the making of a serious crime prevention order on conviction see PARA 350. These provisions are also applicable to a serious crime prevention order made other than on conviction by the High Court under the Serious Crime Act 2007 s 1 (see PARA 599).

7 Serious Crime Act 2007 Sch 2 paras 1(a), 6(a), 12(a). See notes 2-4.

8 Ie under the Serious Crime Act 2007 s 17 or s 18 (see PARA 355).

9 Serious Crime Act 2007 Sch 2 paras 1(b), 6(b), 12(b). See notes 2-4.

10 Ie, whether proceedings on appeal, by virtue of the Serious Crime Act 2007 s 27 (see PARA 350), or otherwise.

11 Serious Crime Act 2007 Sch 2 paras 1(c), 6(c), 12(c). See notes 2-4.

12 Serious Crime Act 2007 Sch 2 paras 1(d), 6(d), 12(d). See notes 2-4.

13 Serious Crime Act 2007 Sch 2 paras 1(e), 6(e), 12(e). See notes 2-4.

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(xi) Sexual Offences Prevention Orders

360. Sexual offences prevention order as part of disposal.

A court¹ may make a sexual offences prevention order² where it deals with the defendant in respect of a specified offence³, where it deals with him in respect of a finding that he is not guilty of such an offence by reason of insanity⁴, or where it deals with him in respect of a finding that he is under a disability and has done the act charged against him in respect of such an offence⁵. In these circumstances the court may make an order on its own initiative if it is satisfied that it is necessary⁶ so to do for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant⁷. A defendant may appeal to the Crown Court against the making of an order⁸.

Sexual offences prevention orders may also be made on complaint⁹.

1 For these purposes 'court' includes a service court (ie the Court Martial and the Service Civilian Court): Sexual Offences Act 2003 s 137(2), (4) (s 137(4) amended by the Armed Forces Act 2006 Sch 16 para 211). Where the court making a sexual offences prevention order is a service court the Sexual Offences Act 2003 s 104(1)(a), (4)-(6) (see PARAS 361, 600) and s 109 (see PARA 601) (and corresponding Scottish provisions) do not apply: s 137(3)(a).

2 Ie an order under the Sexual Offences Act 2003 s 104.

3 Sexual Offences Act 2003 s 104(2). As to the specified offences PARA 361.

4 Sexual Offences Act 2003 s 104(3)(a). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

5 Sexual Offences Act 2003 s 104(3)(b). A reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence includes a reference to his being or having been found unfit to be tried and to have done the act charged against him in respect of the offence (see the Criminal Procedure (Insanity) Act 1964 s 4, s 4A; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265) (Sexual Offences Act 2003 s 135(3)(c)), unfit to be tried for the offence (s 135(3)(a)), or to be insane so that his trial for the offence cannot or could not proceed (s 135(3)(b)).

6 'Necessary' imposes a higher qualifying test than 'appropriate' or 'desirable', and there must be material upon which the sentencing judge can reach the conclusion that such an order was necessary to protect the public from serious harm: see *R v D* [2005] EWCA Crim 3660, [2006] 2 All ER 726, [2006] 2 Cr App Rep (S) 204; *R v Halloran* [2004] EWCA Crim 233, [2004] 2 Cr App Rep (S) 301, [2004] Crim LR 392 (corresponding phrase in respect of a restraining order under the Sex Offenders Act 1997 s 5A (repealed)). See also *R v Beaney* [2004] EWCA Crim 449, [2004] 2 Cr App Rep (S) 441, [2004] Crim LR 480; *R v Collard* [2004] EWCA Crim 1664, [2005] 1 Cr App Rep (S) 155, [2004] Crim LR 757 (both cases concerned with restraining orders).

7 Sexual Offences Act 2003 s 104(1)(b). 'Protecting the public or any particular members of the public from serious sexual harm from the defendant' means protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Sch 3 (see PARA 560): s 106(3). As to the meaning of 'United Kingdom' see PARA 9 note 2. It is not a pre-condition to the making of a sexual offences prevention order that the judge is satisfied that the defendant also qualifies for an extended custodial sentence pursuant to the Criminal Justice Act 2003 s 227 (see PARA 75): *R v Richards* [2006] EWCA Crim 2519, [2007] 1 WLR 847, [2007] 1 Cr App Rep (S) 734.

As to the terms of the order see *R v D* [2005] EWCA Crim 3660, [2006] 2 All ER 726, [2006] 2 Cr App Rep (S) 204. Since a breach of a sexual offences prevention order is punishable by up to five years' imprisonment, the defendant has to know with sufficient precision whether what he was contemplating doing was in breach of the

order or not and the person drafting the order has to apply the same care as the drafting of offences in statutes, or the drafting of injunctions: see *R v H* [2006] EWCA Crim 1470, [2006] All ER (D) 87 (Jun).

8 See PARA 363.

9 See the Sexual Offences Act 2003 s 104(5), (6); and PARA 600.

UPDATE

360 Sexual offences prevention order as part of disposal

NOTE 7--As to the terms of the order see also *R v Hemsley* [2010] EWCA Crim 225, [2010] All ER (D) 203 (Feb).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(1) PREVENTIVE ORDERS/(xi) Sexual Offences Prevention Orders/361. Offences in relation to which orders can be made.

361. Offences in relation to which orders can be made.

The offences in respect of which a sexual offences prevention order may be made¹ are any of the listed sexual offences in respect of which the notification requirements arise² and:

- 1169 (1) murder³;
- 1170 (2) manslaughter⁴;
- 1171 (3) kidnapping⁵;
- 1172 (4) false imprisonment⁶;
- 1173 (5) outraging public decency⁷;
- 1174 (6) soliciting murder⁸;
- 1175 (7) threats to kill⁹;
- 1176 (8) wounding with intent to cause grievous bodily harm¹⁰;
- 1177 (9) malicious wounding¹¹;
- 1178 (10) attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence¹²;
- 1179 (11) using chloroform, etc, to commit or assist in the committing of any indictable offence¹³;
- 1180 (12) maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm¹⁴;
- 1181 (13) abandoning children¹⁵;
- 1182 (14) causing bodily injury by explosives¹⁶;
- 1183 (15) using explosives, etc, with intent to do grievous bodily harm¹⁷;
- 1184 (16) placing explosives with intent to do bodily injury¹⁸;
- 1185 (17) setting spring guns, etc, with intent to do grievous bodily harm¹⁹;
- 1186 (18) endangering the safety of railway passengers²⁰;
- 1187 (19) injuring persons by furious driving²¹;
- 1188 (20) assaulting an officer preserving a wreck²²;
- 1189 (21) assault with intent to resist arrest²³;
- 1190 (22) assault occasioning actual bodily harm²⁴;
- 1191 (23) causing an explosion likely to endanger life or property²⁵;
- 1192 (24) attempting to cause explosion, or making or keeping explosives, with intent to endanger life or property²⁶;
- 1193 (25) child destruction²⁷;
- 1194 (26) cruelty to children²⁸;
- 1195 (27) infanticide²⁹;
- 1196 (28) possession of a firearm with intent to endanger life³⁰;
- 1197 (29) possession of a firearm with intent to cause fear of violence³¹;
- 1198 (30) use of a firearm to resist arrest³²;
- 1199 (31) possession of a firearm when committing or being arrested for a violent offence³³;
- 1200 (32) carrying a firearm with criminal intent³⁴;
- 1201 (33) theft³⁵;
- 1202 (34) robbery or assault with intent to rob³⁶;
- 1203 (35) burglary with intent to steal, inflict grievous bodily harm or do unlawful damage³⁷;
- 1204 (36) aggravated burglary³⁸;

- 1205 (37) aggravated vehicle-taking³⁹ involving an accident which caused the death of any person⁴⁰;
- 1206 (38) arson⁴¹;
- 1207 (39) destroying or damaging property⁴² other than an offence of arson⁴³;
- 1208 (40) hostage-taking⁴⁴;
- 1209 (41) hijacking of ships or aircraft⁴⁵;
- 1210 (42) destroying, damaging or endangering the safety of aircraft⁴⁶;
- 1211 (43) other acts endangering or likely to endanger the safety of aircraft⁴⁷;
- 1212 (44) offences in relation to the carrying of certain dangerous articles on aircraft or in aviation installations⁴⁸;
- 1213 (45) ill-treatment of mentally-disordered persons⁴⁹;
- 1214 (46) child abduction⁵⁰;
- 1215 (47) female genital mutilation⁵¹;
- 1216 (48) riot⁵²;
- 1217 (49) violent disorder⁵³;
- 1218 (50) affray⁵⁴;
- 1219 (51) torture⁵⁵;
- 1220 (52) causing death by dangerous driving⁵⁶;
- 1221 (53) causing death by careless driving when under the influence of drink or drugs⁵⁷;
- 1222 (54) endangering safety at aerodromes⁵⁸;
- 1223 (55) seizing or exercising control of fixed platforms⁵⁹;
- 1224 (56) destroying fixed platforms or endangering their safety⁶⁰;
- 1225 (57) other acts endangering or likely to endanger safe navigation⁶¹;
- 1226 (58) offences involving threats to ships or fixed platforms⁶²;
- 1227 (59) harassment⁶³;
- 1228 (60) putting people in fear of violence⁶⁴;
- 1229 (61) racially or religiously aggravated assaults⁶⁵;
- 1230 (62) racially or religiously aggravated public order offences⁶⁶;
- 1231 (63) offences relating to Channel Tunnel trains and the tunnel system⁶⁷;
- 1232 (64) sending certain articles by post⁶⁸;
- 1233 (65) genocide, crimes against humanity, war crimes and related offences⁶⁹, other than an offence involving murder⁷⁰;
- 1234 (66) improper use of public telecommunications network⁷¹;
- 1235 (67) paying for the sexual services of a child⁷² where the victim or (as the case may be) other party was aged 16 or over⁷³;
- 1236 (68) causing or inciting prostitution for gain⁷⁴;
- 1237 (69) controlling prostitution for gain⁷⁵;
- 1238 (70) trafficking into, out of or within the United Kingdom for sexual exploitation⁷⁶;
- 1239 (71) causing or allowing the death of a child or vulnerable adult⁷⁷; and
- 1240 (72) contravening a notice relating to encrypted information or tipping off in connection with such a notice⁷⁸.

A reference in this list to an offence includes a reference to any attempt, conspiracy or incitement of another to commit⁷⁹, and to aiding, abetting, counselling or procuring the commission of⁸⁰, any of the offences in respect of which such an order may be made, and also includes a reference to an offence under the statutory provisions relating to the encouragement or assistance of crime⁸¹ in relation to which the listed offence is the offence (or one of the offences) which the person intended or believed would be committed⁸². Provision is also made in respect of corresponding service offences⁸³, and Scottish⁸⁴ and Northern Ireland⁸⁵ offences.

1 As to the making of a sexual offences prevention order where a court is dealing with an offender see PARA 360. Sexual offences prevention orders may also be made on complaint: see PARA 600.

2 Sexual Offences Act 2003 s 104(2). As to the offences in respect of which the notification requirements arise see Sch 3; and PARA 560. The Secretary of State may by order amend the list of offences in respect of which a sexual offences prevention order may be made (ie Schs 3, 5): s 130(1). Any such amendment which adds an offence (s 130(4)(a)), removes a threshold relating to an offence (s 130(4)(b)) or changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within Sch 5 when it would not otherwise be (s 130(4)(c)) does not apply to convictions, findings or cautions before the amendment takes effect (s 130(2)). However, for the purposes of s 106 and s 116 (see PARAS 534, 600), an amendment within s 130(4) applies to convictions, findings or cautions before as well as after the amendment takes effect: s 130(3). Where (by virtue of an order under s 130 or otherwise) an offence is listed in Sch 5 (see the text and notes 3-85) subject to a sentencing condition, s 132 (see PARA 561 note 4) applies to that offence as if references to Sch 3 were references to Sch 5: s 132(8).

Acts, behaviour, convictions and findings include those occurring before 1 May 2004 (ie the date on which Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874): Sexual Offences Act 2003 s 106(2), (4). As to the meaning of 'conviction' see PARA 363 note 2.

3 Sexual Offences Act 2003 Sch 5 para 1. As to the offence of murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 89.

4 Sexual Offences Act 2003 Sch 5 para 2. As to the offence of manslaughter see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92.

5 Sexual Offences Act 2003 Sch 5 para 3. As to the offence of kidnapping see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 136.

6 Sexual Offences Act 2003 Sch 5 para 4. As to the offence of false imprisonment see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 135.

7 Sexual Offences Act 2003 Sch 5 para 4A (added by SI 2007/296). As to the offence of outraging public decency see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 764.

8 Sexual Offences Act 2003 Sch 5 para 5. As to the offence of soliciting murder (ie an offence under the Offences Against the Person Act 1861 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 104.

9 Sexual Offences Act 2003 Sch 5 para 6. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 16) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 105.

10 Sexual Offences Act 2003 Sch 5 para 7. As to the offence of wounding with intent to cause grievous bodily harm (ie an offence under the Offences Against the Person Act 1861 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118.

11 Sexual Offences Act 2003 Sch 5 para 8. As to the offence of malicious wounding (ie an offence under the Offences Against the Person Act 1861 s 20) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120.

12 Sexual Offences Act 2003 Sch 5 para 9. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 21) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 121.

13 Sexual Offences Act 2003 Sch 5 para 10. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 22) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 122.

14 Sexual Offences Act 2003 Sch 5 para 11. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 23) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124.

15 Sexual Offences Act 2003 Sch 5 para 12. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 27) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 143.

16 Sexual Offences Act 2003 Sch 5 para 13. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 28) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125.

17 Sexual Offences Act 2003 Sch 5 para 14. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 29) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126.

- 18 Sexual Offences Act 2003 Sch 5 para 15. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 30) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 130.
- 19 Sexual Offences Act 2003 Sch 5 para 16. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 31) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 131.
- 20 Sexual Offences Act 2003 Sch 5 para 17. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 32) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 132.
- 21 Sexual Offences Act 2003 Sch 5 para 18. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 35) see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1018.
- 22 Sexual Offences Act 2003 Sch 5 para 19. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 37) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1228.
- 23 Sexual Offences Act 2003 Sch 5 para 20. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 38) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 737.
- 24 Sexual Offences Act 2003 Sch 5 para 21. As to this offence (ie an offence under the Offences Against the Person Act 1861 s 47) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 149.
- 25 Sexual Offences Act 2003 Sch 5 para 22. As to this offence (ie an offence under the Explosive Substances Act 1883 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127.
- 26 Sexual Offences Act 2003 Sch 5 para 23. As to this offence (ie an offence under the Explosive Substances Act 1883 s 3) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 128.
- 27 Sexual Offences Act 2003 Sch 5 para 24. As to this offence (ie an offence under the Infant Life (Preservation) Act 1929 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 108.
- 28 Sexual Offences Act 2003 Sch 5 para 25. As to this offence (ie an offence under the Children and Young Persons Act 1933 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 143; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 611.
- 29 Sexual Offences Act 2003 Sch 5 para 26. As to this offence (ie an offence under the Infanticide Act 1938 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 103.
- 30 Sexual Offences Act 2003 Sch 5 para 27. As to this offence (ie an offence under the Firearms Act 1968 s 16) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 674.
- 31 Sexual Offences Act 2003 Sch 5 para 28. As to this offence (ie an offence under the Firearms Act 1968 s 16A) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 675.
- 32 Sexual Offences Act 2003 Sch 5 para 29. As to this offence (ie an offence under the Firearms Act 1968 s 17(1)) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 676.
- 33 Sexual Offences Act 2003 Sch 5 para 30. As to this offence (ie an offence under the Firearms Act 1968 s 17(2), Sch 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 677.
- 34 Sexual Offences Act 2003 Sch 5 para 31. As to this offence (ie an offence under the Firearms Act 1968 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 679.
- 35 Sexual Offences Act 2003 Sch 5 para 31A (added by SI 2007/296). As to this offence (ie an offence under the Theft Act 1968 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282.
- 36 Sexual Offences Act 2003 Sch 5 para 32 (amended by SI 2007/296). As to this offence (ie an offence under the Theft Act 1968 s 8) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293.
- 37 Sexual Offences Act 2003 Sch 5 para 33 (substituted by SI 2007/296). As to this offence (ie an offence under the Theft Act 1968 s 9(1)(a)) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294.
- 38 Sexual Offences Act 2003 Sch 5 para 34. As to the offence of aggravated burglary (ie an offence under the Theft Act 1968 s 10) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 295.
- 39 As to the offence of aggravated vehicle-taking (ie an offence under the Theft Act 1968 s 12A) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 299.

40 Sexual Offences Act 2003 Sch 5 para 35.

41 Sexual Offences Act 2003 Sch 5 para 36. As to the offence of arson (ie an offence under the Criminal Damage Act 1971 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334.

42 ie an offence under the Sexual Offences Act 2003 s 1(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334).

43 Sexual Offences Act 2003 Sch 5 para 37.

44 Sexual Offences Act 2003 Sch 5 para 38. As to the offence of hostage-taking (ie an offence under the Taking of Hostages Act 1982 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 468.

45 Sexual Offences Act 2003 Sch 5 paras 39, 52. As to the offence of hijacking (ie an offence under the Aviation Security Act 1982 s 1 in relation to aircraft or the Aviation and Maritime Security Act 1990 s 9 in relation to ships) see **AIR LAW** vol 2 (2008) PARA 624; **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1210.

46 Sexual Offences Act 2003 Sch 5 para 40. As to this offence (ie an offence under the Aviation Security Act 1982 s 2) see **AIR LAW** vol 2 (2008) PARA 628.

47 Sexual Offences Act 2003 Sch 5 para 41. As to this offence (ie an offence under the Aviation Security Act 1982 s 3) see **AIR LAW** vol 2 (2008) PARA 629.

48 Sexual Offences Act 2003 Sch 5 para 42. As to this offence (ie an offence under the Aviation Security Act 1982 s 4) see **AIR LAW** vol 2 (2008) PARA 630.

49 Sexual Offences Act 2003 Sch 5 para 43. As to this offence (ie an offence under the Mental Health Act 1983 s 127) see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 767.

50 Sexual Offences Act 2003 Sch 5 paras 43A, 43B (added by SI 2007/296). As to this offence (ie an offence under the Child Abduction Act 1984 ss 1, 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 137, 141; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 781, 785.

51 Sexual Offences Act 2003 Sch 5 para 44. This provision refers to this offence as being committed under the Prohibition of Female Circumcision Act 1985 s 1 (repealed), but the offence of female genital mutilation is now committed under the Female Genital Mutilation Act 2003 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 157).

52 Sexual Offences Act 2003 Sch 5 para 45. As to the offence of riot (ie an offence under the Public Order Act 1986 s 1) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 555.

53 Sexual Offences Act 2003 Sch 5 para 46. As to the offence of violent disorder (ie an offence under the Public Order Act 1986 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 556.

54 Sexual Offences Act 2003 Sch 5 para 47. As to the offence of affray (ie an offence under the Public Order Act 1986 s 3) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 557.

55 Sexual Offences Act 2003 Sch 5 para 48. As to the offence of torture (ie an offence under the Criminal Justice Act 1988 s 134) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 160.

56 Sexual Offences Act 2003 Sch 5 para 49. As to this offence (ie an offence under the Road Traffic Act 1988 s 1) see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 963.

57 Sexual Offences Act 2003 Sch 5 para 50. As to this offence (ie an offence under the Road Traffic Act 1988 s 3A) see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 974.

58 Sexual Offences Act 2003 Sch 5 para 51. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 1) see **AIR LAW** vol 2 (2008) PARA 631.

59 Sexual Offences Act 2003 Sch 5 para 53. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 10) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1211. As to the meaning of 'fixed platform' see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1211.

60 Sexual Offences Act 2003 Sch 5 para 54. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 11) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1212.

- 61 Sexual Offences Act 2003 Sch 5 para 55. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 12) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1213.
- 62 Sexual Offences Act 2003 Sch 5 para 56. As to this offence (ie an offence under the Aviation and Maritime Security Act 1990 s 13) see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1214.
- 63 Sexual Offences Act 2003 Sch 5 para 56A (added by SI 2007/296). As to this offence (ie an offence under the Protection from Harassment Act 1997 s 2) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 152.
- 64 Sexual Offences Act 2003 Sch 5 para 57 (amended by SI 2007/296). As to this offence (ie an offence under the Protection from Harassment Act 1997 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 153.
- 65 Sexual Offences Act 2003 Sch 5 para 58. As to this offence (ie an offence under the Crime and Disorder Act 1998 s 29) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 155.
- 66 Sexual Offences Act 2003 Sch 5 para 59. The offences referred to in the text are offences under the Public Order Act 1986 s 4 or s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 558, 559) which fall within the Crime and Disorder Act 1998 s 31(1)(a) or (b) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 561); Sexual Offences Act 2003 Sch 5 para 59.
- 67 Sexual Offences Act 2003 Sch 5 para 60. The offences referred to in the text are offences under the Channel Tunnel (Security) Order 1994, SI 1994/570, Pt II.
- 68 Sexual Offences Act 2003 Sch 5 para 60A (added by SI 2007/296). The offence referred to in the text is an offence under the Postal Services Act 2000 s 85(3) or (4): see **POST OFFICE**.
- 69 Ie an offence under the International Criminal Court Act 2001 s 51 or s 52 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 454, 455).
- 70 Sexual Offences Act 2003 Sch 5 para 61.
- 71 Sexual Offences Act 2003 Sch 5 para 61A (added by SI 2007/296). As to this offence (ie an offence under the Communications Act 2003 s 127(1)) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 766.
- 72 Ie an offence under the Sexual Offences Act 2003 s 47 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 215).
- 73 Sexual Offences Act 2003 Sch 5 para 62. A reference to a person's age is a reference to his age at the time of the offence: Sch 5 para 174. See also the Children and Young Persons Act 1933 s 99(2) (which provides that where a charge or indictment alleges that a person in respect of whom an offence has been committed is under a specified age, there is a rebuttable presumption that the person is under that age); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1243.
- 74 Sexual Offences Act 2003 Sch 5 para 63 (substituted by SI 2007/296). As to this offence (ie an offence under the Sexual Offences Act 2003 ss 51, 52) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217.
- 75 Sexual Offences Act 2003 Sch 5 para 63 (substituted by SI 2007/296). As to this offence (ie an offence under the Sexual Offences Act 2003 ss 51, 53) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217.
- 76 Sexual Offences Act 2003 Sch 5 para 63 (substituted by SI 2007/296). As to these offences (ie an offence under the Sexual Offences Act 2003 s 57, s 58 or s 59) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 228. As to the meaning of 'United Kingdom' see PARA 9 note 2.
- 77 Sexual Offences Act 2003 Sch 5 para 63A (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 59(1), (2)). As to this offence (ie an offence under the Domestic Violence, Crime and Victims Act 2004 s 5) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 107.
- 78 Sexual Offences Act 2003 Sch 5 para 60ZA (added by the Policing and Crime Act 2009 Sch 7 para 25(1), (2)). As to this offence (ie an offence under the Regulation of Investigatory Powers Act 2000 s 53 or s 54) see **POLICE** vol 36(1) (2007 Reissue) PARAS 517, 518.

79 Sexual Offences Act 2003 Sch 5 para 173(a). This does not, however, include an attempt to incite the commission of an offence: see *R v Parnell* [2004] EWCA Crim 2523, [2005] 1 WLR 853, (2004) Times, 8 November (case concerned with similar terminology in the Sex Offenders Act 1997 Sch 1 para 5(1) (repealed)).

80 Sexual Offences Act 2003 Sch 5 para 173(b).

81 Ie the Serious Crime Act 2007 Pt 2 (ss 44-67) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

82 Sexual Offences Act 2003 Sch 5 para 173A (added by the Serious Crime Act 2007 Sch 6 para 63(1), (3)).

83 Ie an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70 or the Naval Discipline Act 1957 s 42 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 422) of which the corresponding civil offence (within the meaning of those Acts: see **ARMED FORCES** vol 2(2) (Reissue) PARA 422) is an offence listed in any of heads (1)-(71) in the text (Sexual Offences Act 2003 Sch 5 para 172 (amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 59(4))), and an offence under the Armed Forces Act 2006 s 42 (see **ARMED FORCES**) as respects which the corresponding offence under the law of England and Wales (within the meaning given by s 42) is an offence listed in any of heads (1)-(71) in the text (Sexual Offences Act 2003 Sch 5 para 172A(1) (Sch 5 para 172A added by the Armed Forces Act 2006 Sch 16 para 213; and amended by the Serious Crime Act 2007 Sch 5 para 4(1), (3))). The Armed Forces Act 2006 s 48 (attempts, conspiracy, encouragement and assistance and aiding and abetting outside England and Wales: see **ARMED FORCES**) applies with modifications for the purposes of the Sexual Offences Act 2003 Sch 5 para 172A: Sch 5 para 172A(2) (as so added and amended).

84 See the Sexual Offences Act 2003 Sch 5 paras 64-111.

85 See the Sexual Offences Act 2003 Sch 5 paras 112-171B.

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362. The order and its effect.

A sexual offences prevention order, whether made as part of disposal or on police application¹, prohibits the defendant doing anything described in it². The only prohibitions which may be included in the order are those necessary to protect the public or any particular members of the public from serious sexual harm from the defendant³. A sexual offences prevention order has effect for a fixed period specified in the order, which must be not less than five years⁴. Alternatively, the order may be stated to have effect until further order by the court⁵.

Where a sexual offences prevention order is made in respect of a defendant who was subject to the notification requirements⁶ immediately before the making of the order⁷ and who would otherwise cease to be subject to those requirements while the order (as from time to time renewed) has effect⁸, the defendant remains subject to those requirements⁹. Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order, the order subjects the defendant to the notification requirements from the making of the order until (as from time to time renewed) it ceases to have effect¹⁰.

Where a court makes a sexual offences prevention order against a person who is already subject to a sexual offences prevention order (whether made by that court or another), the earlier order ceases to have effect¹¹. Provision for the variation, renewal or discharge of a sexual offences prevention order is also made¹².

A court which makes a sexual offences prevention order in respect of a young offender (that is, a person aged under 18) may also make a parental direction¹³.

1 As to the making of a sexual offences prevention order where a court is dealing with an offender see PARA 360. Sexual offences prevention orders may also be made on complaint: see PARA 600.

2 Sexual Offences Act 2003 s 107(1)(a). A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a sexual offences prevention order: see PARA 364.

3 Sexual Offences Act 2003 s 107(2). As to the meaning of 'protecting the public or any particular members of the public from serious sexual harm from the defendant' see PARA 360 note 7 (definition applied by s 107(7)).

4 Sexual Offences Act 2003 s 107(1)(b).

5 Sexual Offences Act 2003 s 107(1)(b).

6 As to the circumstances in which the notification requirements arise in respect of an offender see PARA 557 et seq. Such an offender is known as a 'relevant offender': see PARA 558.

7 Sexual Offences Act 2003 s 107(3)(a).

8 Sexual Offences Act 2003 s 107(3)(b).

9 Sexual Offences Act 2003 s 107(3).

10 Sexual Offences Act 2003 ss 107(4)(a). Pt 2 (ss 80-136) applies to the defendant subject to the modification that the 'relevant date' is the date of service of the order: ss 107(5), 133(1).

11 Sexual Offences Act 2003 s 107(6).

12 See PARAS 365-367.

13 See the Sexual Offences Act 2003 s 89(1); and PARA 569.

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363. Appeals against sexual offences prevention orders made on conviction.

Where a sexual offences prevention order¹ is made against the defendant as part of disposal after a conviction for a listed offence² or a finding in respect of such an offence³, the defendant may appeal against the making of the order as if he were appealing against sentence⁴.

¹ As to the making of a sexual offences prevention order where a court is dealing with an offender see PARA 360. Sexual offences prevention orders may also be made on complaint: see PARA 600.

² I.e. under the Sexual Offences Act 2003 s 104(2): see PARAS 360, 361. For the purposes of Pt 2 (ss 80-136), a 'conviction' includes a conviction for an offence in respect of which the offender receives a conditional discharge (see PARA 40) (and, in Scotland, in respect of which a probation order is made and, in the case of a court-martial or standing civilian court, in respect of which a community supervision order is made): see s 134(1), (3) (s 134(1) amended by the Armed Forces Act 2006 Sch 16 para 210), disapplying for these purposes the Powers of Criminal Courts (Sentencing) Act 2000 s 14(1) (see PARA 41) (and corresponding Scottish and Northern Irish provisions), the Army Act 1955 Sch 5A para 5(1), the Air Force Act 1955 Sch 5A para 5(1), and the Naval Discipline Act 1957 Sch 4A para 5(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 435, 437), and the Armed Forces Act 2006 s 187(1) (see **ARMED FORCES**). Those provisions (which state that a conviction with such an order is deemed not to be a conviction for any other purpose) are disapplied in relation to convictions on or after 1 May 2004 (or before or after that date in the case of a community supervision order) in respect of the notification requirements: Sexual Offences Act 2003 s 134(2). The effect of the absence in s 134 of a disapplication of the provisions relating to absolute discharges is to prevent a conviction followed by an absolute discharge constituting a conviction for these purposes.

'Conviction' also includes a finding of a court in summary proceedings, where the court makes an order under the Mental Health Act 1983 s 37(3) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491) (or its Scottish or Northern Irish counterpart), on the ground that the accused did the act charged: Sexual Offences Act 2003 s 135(1), (2).

³ I.e. under the Sexual Offences Act 2003 s 104(3): see PARA 360.

⁴ Sexual Offences Act 2003 s 110(1)(a), (b).

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364. Breach.

A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a sexual offences prevention order¹. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding five years², or on summary conviction to imprisonment for a term not exceeding six months³ or to a fine not exceeding the statutory maximum⁴ or to both⁵.

1 Sexual Offences Act 2003 s 113(1)(a). As to the making of a sexual offences prevention order where a court is dealing with an offender see PARA 360. Sexual offences prevention orders may also be made on complaint: see PARA 600. A person also commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a restraining order under the Sex Offenders Act 1997 s 5A (repealed) (Sexual Offences Act 2003 s 113(1)(c)) or a sex offender order under the Crime and Disorder Act 1998 s 2 (repealed) (Sexual Offences Act 2003 s 113(1)(d)).

2 Sexual Offences Act 2003 s 113(2)(b). It is not open to the court by or before which a person is convicted of one of these offences to make an order of conditional discharge (see PARA 40) in respect of it: s 113(3).

3 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed.

4 As to the statutory maximum see PARA 140.

5 Sexual Offences Act 2003 s 113(2)(a).

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365. Variation, renewal and discharge.

The defendant or the police may apply for the variation, renewal or discharge of a sexual offences prevention order¹. An application for variation, renewal or discharge must be made to the appropriate court², which is either:

- 1241 (1) the Crown Court (where the order was made by the Crown Court or the Court of Appeal)³; or
- 1242 (2) the magistrates' court or youth court which made the original order, or a magistrates' court (or youth court, as the case may be) for the area in which the defendant resides or, where the application is made by the police, any magistrates' court whose commission area includes any part of the relevant police area⁴.

Where the appropriate court is the Crown Court, an application for variation, renewal or discharge must be made in compliance with rules of court⁵. An application to a magistrates' court or youth court must be made by complaint⁶.

1 Sexual Offences Act 2003 s 108(1), (2). As to the making of a sexual offences prevention order where a court is dealing with an offender see PARA 360. Sexual offences prevention orders may also be made on complaint: see PARA 600. Although these provisions refer to a 'chief officer of police' in connection with the making of applications for variation, renewal or discharge, the powers described in the text are exercisable by the police generally (ie by another suitable person to whom the chief officer has delegated his responsibility) (see *R (on the application of the Chief Constable of West Midlands Police) v Birmingham Justices* [2002] EWHC 1087 (Admin), [2003] Crim LR 37, [2002] 28 LS Gaz R 32), and it is therefore broadly correct to refer to the application having to be made by 'the police'. Determination of who is a suitable delegate is for the chief officer, and improper delegation is a matter for the courts: *R (Chief Constable of West Midlands Police) v Birmingham Justices*. This decision was made in relation to an application for an anti-social behaviour order (see PARA 496) but is equally applicable by its reasoning to an application for a sexual offences prevention order.

Applications for variation, renewal or discharge may be made by the police for the area in which the defendant resides (s 108(2)(b)), or police who believe that the defendant is in, or is intending to come to, the area (s 108(2)(c)), or, where applicable, police who made the application for the order in question (s 108(2)(d)). Applications for variation, renewal or discharge may also be made in respect of a restraining order under the Sex Offenders Act 1997 s 5A (repealed) (Sexual Offences Act 2003 s 108(8)(a)) or a sex offender order under the Crime and Disorder Act 1998 s 2 (repealed) (Sexual Offences Act 2003 s 108(8)(b)). As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

2 Sexual Offences Act 2003 s 108(1). Where the court making a sexual offences prevention order is a service court (ie the Court Martial or the Service Civilian Court), the 'appropriate court' in s 108 means the Crown Court in England and Wales: s 137(3)(b), (4) (s 137(4) amended by the Armed Forces Act 2006 Sch 16 para 211).

3 Sexual Offences Act 2003 s 108(7)(a).

4 Sexual Offences Act 2003 s 108(7)(b), (c).

5 Sexual Offences Act 2003 s 108(3)(a).

6 Sexual Offences Act 2003 s 108(3)(b).

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366. Outcome of an application for variation, renewal or discharge.

On an application for the variation, renewal or discharge of a sexual offences prevention order¹ the court, after hearing the applicant and representations from any other person (if he wishes to be heard) who could have applied for a variation, renewal or discharge, may make such order varying, renewing or discharging the main order as it considers appropriate², subject to the following restrictions:

- 1243 (1) a renewal or variation order may impose additional prohibitions on the defendant only if it is necessary to do so for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant³, and any such order may only contain such prohibitions as are necessary for this purpose⁴;
- 1244 (2) the court must not discharge a sexual offences prevention order before the end of the fixed period of five years beginning with the day on which it was made, without the consent of the defendant⁵ and either the police⁶ (where the application for discharge is made by them)⁷ or the police for the area in which the defendant resides (in any other case)⁸.

1 As to such applications see PARA 365.

2 Sexual Offences Act 2003 s 108(4).

3 As to the meaning of 'protecting the public or any particular members of the public from serious sexual harm from the defendant' see PARA 360 note 7.

4 Sexual Offences Act 2003 s 108(5).

5 Sexual Offences Act 2003 s 108(6).

6 The Sexual Offences Act 2003 ss 108 refers to a 'chief officer of police' but the powers described in the text are exercisable by the police generally: see PARA 365 note 1.

7 Sexual Offences Act 2003 s 108(6)(a).

8 Sexual Offences Act 2003 s 108(6)(b).

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367. Appeals against order for variation, renewal or discharge.

A defendant may appeal against an order varying, renewing or discharging a sexual offences prevention order¹ or the refusal to make such an order². Appeals are made to the Crown Court³ unless the order appealed against is an order varying, renewing or discharging a sexual offences prevention order which was applied for in the Crown Court, in which case appeal lies to the Court of Appeal⁴. Where the appeal is to the Crown Court, the court may make such orders as may be necessary to give effect to its determination of the appeal and such incidental or consequential order as may appear to it to be just⁵.

1 See PARA 365.

2 Sexual Offences Act 2003 s 110(3).

3 Sexual Offences Act 2003 s 110(3)(b).

4 Sexual Offences Act 2003 s 110(3)(a). Where the court making a sexual offences prevention order is a service court (ie the Court Martial or the Service Civilian Court), the references in s 110(3)(a) to the Crown Court and Court of Appeal are references to the Crown Court and Court of Appeal in England and Wales: s 137(3)(c), (4) (s 137(4) amended by the Armed Forces Act 2006 Sch 16 para 211).

5 Sexual Offences Act 2003 s 110(4).

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(xii) Supervision Orders

368. Making of supervision orders.

The court may make a supervision order¹ where:

- 1245 (1) a special verdict of not guilty by reason of insanity² is returned³; or
- 1246 (2) findings have been made that the defendant is under a disability and that he did the act or omission charged against him⁴.

The court must not make a supervision order unless it is satisfied that:

- 1247 (a) having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the defendant or appellant⁵;
- 1248 (b) the supervising officer intended to be specified in the order is willing to undertake the supervision⁶; and
- 1249 (c) arrangements have been made for the treatment intended to be specified in the order⁷.

A person in respect of whom the Crown Court has made a supervision order after a verdict of not guilty by reason of insanity or after findings that the defendant is under a disability⁸ may appeal to the Court of Appeal against the order⁹.

1 'Supervision order' means an order which requires the person in respect of whom it is made (the 'supervised person') to be under the supervision of a social worker or an officer of a local probation board or an officer of a provider of probation services (the 'supervising officer') for a period specified in the order of not more than two years: Criminal Procedure (Insanity) Act 1964 s 5(4), Sch 1A para 1 (s 5 substituted, s 5A, Sch 1A added, by the Domestic Violence, Crime and Victims Act 2004 s 24(1), Sch 2; Criminal Procedure (Insanity) Act 1964 Sch 1A para 1(1) amended by SI 2008/912). A supervision order may, in accordance with the Criminal Procedure (Insanity) Act 1964 Sch 1A para 4 or Sch 1A para 5 (see PARA 369), require the supervised person to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a registered medical practitioner: Sch 1A para 1(2) (as so added). As to local probation boards and providers of probation services see PARA 733 et seq.

The Secretary of State may by order direct that Sch 1A para 1(1) be amended by substituting, for the period for the time being specified there, such period as may be specified in the order: Sch 1A para 1(3) (as so added). An order under Sch 1A para 1(3) may make in Sch 1A para 11(2) (see PARA 370) any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order: Sch 1A para 1(4) (as so added). At the date at which this volume states the law no such order had been made.

Before making a supervision order, the court must explain to the supervised person in ordinary language the effect of the order (including any requirements proposed to be included in the order in accordance with Sch 1A para 4, 5 or 8 (see PARA 369) (Sch 1A para 3(2)(a) (as so added))) and that a magistrates' court has power under Sch 1A paras 9-11 (see PARA 370) to review the order on the application either of the supervised person or of the supervising officer (Sch 1A para 3(2)(b) (as so added)). After making an order, the court must forthwith give copies of the order to an officer of a local probation board assigned to the court or an officer of a provider of probation services acting at the court, and he must give a copy to the supervised person (Sch 1A para 3(3)(a) (as so added; amended by SI 2008/912)) and to the supervising officer (Criminal Procedure (Insanity) Act 1964 Sch 1A para 3(3)(b) (as so added)). After making an order, the court must also send to the designated officer for the local justice area in which the supervised person resides or will reside (the 'local justice area concerned') a copy of the order (Sch 1A para 3(4)(a) (as so added)) and such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order (Sch 1A para 3(4)(b) (as so added)).

Persons in respect of whom supervision orders may be made may be remanded to hospital for a report on their mental condition or for treatment (see the Criminal Procedure (Insanity) Act 1964 s 5A(2); the Mental Health Act 1983 ss 35, 36; and PARAS 335, 336).

2 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

3 Criminal Procedure (Insanity) Act 1964 ss 5(1)(a), (2)(b) (as substituted: see note 1). In these circumstances the court may also make a hospital order or an order for the absolute discharge of the accused: see s 5(2)(b), (c); and PARAS 40, 332.

4 Criminal Procedure (Insanity) Act 1964 s 5(1)(b) (as substituted: see note 1). See also note 3. As to such findings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265.

5 Criminal Procedure (Insanity) Act 1964 Sch 1A para 2(1) (as added: see note 1).

6 Criminal Procedure (Insanity) Act 1964 Sch 1A para 2(2)(a) (as added: see note 1).

7 Criminal Procedure (Insanity) Act 1964 Sch 1A para 2(2)(b) (as added: see note 1).

8 Ie under the Criminal Procedure (Insanity) Act 1964 s 5 (see the text and notes 1-4).

9 Criminal Appeal Act 1968 s 16A(1)(b) (ss 16A, 16B added by the Domestic Violence, Crime and Victims Act 2004 s 25).

Such an appeal lies only with the leave of the Court of Appeal; or if the judge of the court of trial (ie, where the Crown Court comprises justices of the peace, the judge presiding: Criminal Appeal Act 1968 s 51(1) (definition substituted by the Courts Act 1971 Sch 8 para 57(3))) grants a certificate that the case is fit for appeal: Criminal Appeal Act 1968 s 16A(2) (as so added).

If on such an appeal the Court of Appeal considers that the appellant should be dealt with differently from the way in which the court below dealt with him:

546 (1) it may quash any order which is the subject of the appeal (s 16B(1)(a) (as so added)); and

547 (2) it may make such order, whether by substitution for the original order or by variation of or addition to it, as it thinks appropriate for the case and as the court below had power to make (s 16B(1)(b) (as so added)).

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369. Requirements to be specified in supervision orders.

A supervision order¹ must either:

1250 (1) specify the local social services authority area in which the supervised person² resides or will reside, and require him to be under the supervision of a social worker of the local social services authority for that area³; or

1251 (2) specify the local justice area in which that person resides or will reside, and require him to be under the supervision of an officer of a local probation board appointed for or assigned to that area or, as the case may be, an officer of a provider of probation services acting in that area⁴.

A supervision order may also, on medical advice⁵ include a requirement that the supervised person must submit, during the whole of the period specified in the order or during such part of that period as may be so specified, to treatment by or under the direction of a registered medical practitioner with a view to the improvement of his mental⁶ or medical⁷ condition⁸.

The supervised person must keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and must notify him of any change of address⁹. A supervision order may also include requirements as to the residence of the supervised person¹⁰.

1 As to supervision orders see PARA 368.

2 As to the 'supervised person' see PARA 368 note 1.

3 Criminal Procedure (Insanity) Act 1964 Sch 1A para 3(1)(a) (Sch 1A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1), Sch 2).

4 Criminal Procedure (Insanity) Act 1964 Sch 1A para 3(1)(b) (as added (see note 1); amended by SI 2008/912). As to local probation boards and providers of probation services see PARA 733 et seq.

5 See notes 6, 7.

6 The court may order treatment with a view to the improvement of a person's mental condition (ie under the Criminal Procedure (Insanity) Act 1964 Sch 1A para 4) if it is satisfied on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly registered, that the mental condition of the supervised person is such as requires and may be susceptible to treatment (Sch 1A para 4(2)(a) (as added: see note 3)) but is not such as to warrant the making of a hospital order within the meaning of the Mental Health Act 1983 (Criminal Procedure (Insanity) Act 1964 Sch 1A para 4(2)(b) (as so added)). As to the making of hospital orders within the meaning of the Mental Health Act 1983 see PARA 332. As to registered medical practitioners see the Medical Act 1983 s 55(1); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 3.

7 The court may order treatment with a view to the improvement of a person's medical condition (ie under the Criminal Procedure (Insanity) Act 1964 Sch 1A para 5), whether or not it includes a requirement under Sch 1A para 4 (see the text and note 8), if it is satisfied on the written or oral evidence of two or more registered medical practitioners that, because of his medical condition, other than his mental condition, the supervised person is likely to pose a risk to himself or others (Sch 1A para 5(1)(a) (as added: see note 3)), and that the condition may be susceptible to treatment (Sch 1A para 5(1)(b) (as so added)).

8 Criminal Procedure (Insanity) Act 1964 Sch 1A paras 4(1), 5(2) (as added: see note 3). The treatment required under Sch 1A paras 4, 5 by any such order must be such one of the following kinds of treatment as may be specified in the order, that is to say treatment as a non-resident patient at such institution or place as may be specified in the order (Sch 1A paras 4(3)(a), 5(3)(a) (as so added)) and treatment by or under the

direction of such registered medical practitioner as may be so specified (Sch 1A paras 4(3)(b), 5(3)(b) (as so added)), but the nature of the treatment may not be specified in the order except as so mentioned (Sch 1A paras 4(3), 5(3) (as so added)). Where the medical practitioner by whom or under whose direction the supervised person is being treated in pursuance of a requirement under Sch 1A para 4 or Sch 1A para 5 is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which is not specified in the order (Sch 1A para 6(1)(a) (as so added)), and is one in or at which the treatment of the supervised person will be given by or under the direction of a registered medical practitioner (Sch 1A para 6(1)(b) (as so added)), he may, with the consent of the supervised person, make arrangements for him to be treated accordingly (Sch 1A para 6(1) (as so added)). Such arrangements may provide for the supervised person to receive part of his treatment as a resident patient in an institution or place of any description: Sch 1A para 6(2) (as so added). Where any such arrangements are made for the treatment of a supervised person:

- 548 (1) the medical practitioner by whom the arrangements are made must give notice in writing to the supervising officer, specifying the institution or place in or at which the treatment is to be carried out (Sch 1A para 6(3)(a) (as so added)); and
- 549 (2) the treatment provided for by the arrangements is deemed to be treatment to which he is required to submit in pursuance of the supervision order (Sch 1A para 6(3)(b) (as so added)).

While the supervised person is under treatment as a resident patient in pursuance of arrangements under Sch 1A para 6, the supervising officer must carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order: Sch 1A para 7 (as so added). As to the 'supervising officer' see PARA 368 note 1.

9 Criminal Procedure (Insanity) Act 1964 Sch 1A para 3(5) (as added: see note 3).

10 Criminal Procedure (Insanity) Act 1964 Sch 1A para 8(1) (as added: see note 3). This is subject to Sch 1A para 8(2) (as so added), which provides that before making a supervision order containing any such requirement the court must consider the home surroundings of the supervised person.

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370. Revocation and amendment of supervision orders.

A supervision order¹ which is in force in respect of any person may be revoked by a magistrates' court acting for the local justice area concerned if it appears to the court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order². A magistrates' court may so revoke an order only on the application of the supervised person³ or the supervising officer⁴: however the court by which a supervision order was made may of its own motion revoke the order if, having regard to circumstances which have arisen since the order was made, it considers that it would be inappropriate for the order to continue⁵.

Where, at any time while a supervision order is in force in respect of any person, a magistrates' court acting for the local justice area concerned is satisfied that the supervised person proposes to change, or has changed, his residence from the area specified in the order to another local social services authority area or local justice area⁶, the court may, and on the application of the supervising officer must, amend the supervision order by substituting the other area for the area specified in the order⁷.

A magistrates' court for the local justice area concerned may, on the application of the supervised person or the supervising officer, by order amend a supervision order by cancelling any of the requirements of the order⁸ or by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it⁹.

Where the medical practitioner by whom or under whose direction a supervised person is being treated for his mental condition in pursuance of any requirement of a supervision order is of a specified opinion¹⁰ relating to the person's treatment¹¹, or is for any reason unwilling to continue to treat or direct the treatment of the supervised person¹², he must make a report in writing to that effect to the supervising officer and that officer must apply¹³ to a magistrates' court for the local justice area concerned for the variation or cancellation of the requirement¹⁴.

1 As to supervision orders see PARA 368.

2 Criminal Procedure (Insanity) Act 1964 Sch 1A para 9(1) (Sch 1A added by the Domestic Violence, Crime and Victims Act 2004 s 24(1), Sch 2). On the making under the Criminal Procedure (Insanity) Act 1964 Sch 1A para 9 of an order revoking a supervision order, the designated officer for the local justice area concerned, or (as the case may be) the Crown Court, must forthwith give copies of the revoking order to the supervising officer: Sch 1A para 13(1) (as so added). A supervising officer to whom in accordance with Sch 1A para 13(1) copies of a revoking order are given must give a copy to the supervised person and to the person in charge of any institution in which the supervised person is residing: Sch 1A para 13(2) (as so added). As to the 'supervising officer' see PARA 368 note 1.

3 As to the 'supervised person' see PARA 368 note 1.

4 Criminal Procedure (Insanity) Act 1964 Sch 1A para 9(1) (as added: see note 2).

5 Criminal Procedure (Insanity) Act 1964 Sch 1A para 9(2) (as added: see note 2).

6 Criminal Procedure (Insanity) Act 1964 Sch 1A para 10(1) (as added: see note 2).

7 Criminal Procedure (Insanity) Act 1964 Sch 1A para 10(2) (as added: see note 2). However, the court may not amend under Sch 1A para 10 a supervision order which contains requirements which, in the opinion of the

court, cannot be complied with unless the supervised person continues to reside in the area specified in the order unless, in accordance with Sch 1A para 11 (see the text and notes 8-9), it either cancels those requirements (Sch 1A para 10(3)(a) (as so added)), or substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area (Sch 1A para 10(3)(b) (as so added)).

On the making under Sch 1A para 10 or Sch 1A para 11 of any order amending a supervision order, the designated officer for the local justice area concerned must forthwith:

- 550 (1) if the order amends the supervision order otherwise than by substituting a new area or a new place for the one specified in the supervision order, give copies of the amending order to the supervising officer (Sch 1A para 14(1)(a) (as so added));
- 551 (2) if the order amends the supervision order in the manner excepted by head (1) above, send to the designated officer for the new local justice area concerned copies of the amending order (Sch 1A para 14(1)(b)(i) (as so added)) and such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in exercising its functions in relation to the order (Sch 1A para 14(1)(b)(ii) (as so added)).

In a case falling within head (2) above, the designated officer for that area must give copies of the amending order to the supervising officer: Sch 1A para 14(1) (as so added).

Where the designated officer for the court making the order is also the designated officer for the new local justice area, head (2) above does not apply (Sch 1A para 14(2)(a) (as so added)), but the designated officers must give copies of the amending order to the supervising officer (Sch 1A para 14(2)(b) (as so added)).

Where in accordance with Sch 1A para 14(1) or (2) copies of an order are given to the supervising officer, he must give a copy to the supervised person and to the person in charge of any institution in which the supervised person is or was residing: Sch 1A para 14(3) (as so added).

8 Criminal Procedure (Insanity) Act 1964 Sch 1A para 11(1)(a) (as added: see note 2). Sch 1A para 11 is without prejudice to the provisions of Sch 1A para 10 (see the text and notes 6-7) but is subject to Sch 1A para 11(2) (as so added), which provides that the power of a magistrates' court under Sch 1A para 11(1) does not include power to amend an order by extending the period specified in it beyond the end of two years from the day of the original order. As to the making of orders under Sch 1A para 11 see Sch 1A para 14; and note 7.

9 Criminal Procedure (Insanity) Act 1964 Sch 1A para 11(1)(b) (as added: see note 2). See note 8.

10 The opinion referred to in the Criminal Procedure (Insanity) Act 1964 Sch 1A para 12(1) is:

- 552 (1) that the treatment of the supervised person should be continued beyond the period specified in the supervision order (Sch 1A para 12(2)(a) (as added: see note 2));
- 553 (2) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order (Sch 1A para 12(2)(b) (as so added));
- 554 (3) that the supervised person is not susceptible to treatment (Sch 1A para 12(2)(c) (as so added)); or
- 555 (4) that the supervised person does not require further treatment (Sch 1A para 12(2)(d) (as so added)).

11 Criminal Procedure (Insanity) Act 1964 Sch 1A para 12(1)(a) (as added: see note 2).

12 Criminal Procedure (Insanity) Act 1964 Sch 1A para 12(1)(b) (as added: see note 2).

13 Ie under the Criminal Procedure (Insanity) Act 1964 Sch 1A para 11 (see the text and notes 8-9).

14 Criminal Procedure (Insanity) Act 1964 Sch 1A para 12(1) (as added: see note 2).

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(xiii) Travel Restriction Orders

371. Nature and effect of orders.

A 'travel restriction order' is an order which may be made in respect of a person who has been convicted of a drug-trafficking offence¹. It prohibits the offender from leaving the United Kingdom² at any time in the period which begins with the offender's release from custody³ and continues after that time for such period of not less than two years as may be specified in the order⁴.

A travel restriction order may contain a direction to the offender to deliver up, or cause to be delivered up, to the court any UK travel authorisation⁵ held by him; and where such a direction is given, the court must send any travel authorisation⁶ delivered up in pursuance of the direction to the Secretary of State at such address as the Secretary of State may determine⁷. Where the offender's travel authorisation⁸ is held by the Secretary of State by reason of the making of any direction contained in a travel restriction order, the Secretary of State (without prejudice to any other power or duty of his to retain the authorisation⁹) may retain it for so long as the prohibition imposed by the order applies to the offender, and is not for the time being suspended¹⁰; and must not return the authorisation¹¹ after the prohibition has ceased to apply, or when it is suspended, except where the authorisation¹² has not expired and an application for its return is made to him by the offender¹³.

A travel restriction order made in relation to any person does not prevent the exercise in relation to that person of any prescribed removal power¹⁴.

1 See the Criminal Justice and Police Act 2001 s 33(1)(a); and PARA 372. For this purpose 'drug trafficking offence' means any of the following offences (including one committed by aiding, abetting, counselling or procuring):

- 556 (1) an offence under the Misuse of Drugs Act 1971 s 4(2) or s 4(3) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772) (Criminal Justice and Police Act 2001 s 34(1)(a));
- 557 (2) an offence under the Misuse of Drugs Act 1971 s 20 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 260) (Criminal Justice and Police Act 2001 s 34(1)(b));
- 558 (3) any such other offence under the Misuse of Drugs Act 1971 as may be designated by order made by the Secretary of State (Criminal Justice and Police Act 2001 s 34(1)(c));
- 559 (4) an offence under the Customs and Excise Management Act 1979 s 50(2), (3) (improper importation: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 994), s 68(2) (exportation: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029) or s 170 (fraudulent evasion: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178), or in connection with a prohibition or restriction on importation or exportation having effect by virtue of the Misuse of Drugs Act 1971 s 3 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 248) (Criminal Justice and Police Act 2001 s 34(1)(d));
- 560 (5) an offence under the Criminal Law Act 1977 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 67) of conspiracy to commit any of the offences in heads (1)-(4) above (Criminal Justice and Police Act 2001 s 34(1)(e));
- 561 (6) an offence under the Criminal Attempts Act 1981 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 79) of attempting to commit any of those offences (Criminal Justice and Police Act 2001 s 34(1)(f)); or

- 562 (7) an offence under the Misuse of Drugs Act 1971 s 19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 770, 772-777, 779) or at common law of inciting (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 65) another person to commit any of those offences (Criminal Justice and Police Act 2001 s 34(1)(g)).

At the date at which this volume states the law no such order had been made under head (3) above.

2 As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Criminal Justice and Police Act 2001 s 33(3)(a). References to the offender's release from custody are references to his first release from custody after the imposition of the travel restriction order which is neither a release on bail (s 33(7)(a)) nor a temporary release for a fixed period (s 33(7)(b)).

4 Criminal Justice and Police Act 2001 s 33(3)(b). The travel restriction order is not intended to be a substitute for imprisonment; its purpose is to reduce the risk of re-offending after release from prison: *R v Mee* [2004] EWCA Crim 629, [2004] 2 Cr App Rep (S) 434, [2004] Crim LR 487.

5 'UK travel authorisation' means, in relation to a person, to one or both of any UK passport (within the meaning of the Immigration Act 1971) that has been issued to him and any ID card issued to him under the Identity Cards Act 2006 which records that he is a British citizen: Criminal Justice and Police Act 2001 s 33(8) (substituted by the Identity Cards Act 2006 s 39(4)).

6 See note 5.

7 Criminal Justice and Police Act 2001 s 33(4) (amended by the Identity Cards Act 2006 s 39(3)).

8 See note 5.

9 See note 5.

10 Criminal Justice and Police Act 2001 s 33(5)(a) (s 33(5) amended by the Identity Cards Act 2006 s 39(3)).

11 See note 5.

12 See note 5.

13 Criminal Justice and Police Act 2001 s 33(5)(b) (as amended: see note 10).

14 Criminal Justice and Police Act 2001 s 37(1). 'Prescribed removal power' means any such power conferred by or under any enactment as consists in a power to order or direct the removal of a person from the United Kingdom (s 37(4)(a)) and is designated for the purposes of s 37 by an order made by the Secretary of State (s 37(4)(b)). The following powers are prescribed by the Travel Restriction Order (Prescribed Removal Powers) Order 2002, SI 2002/313, art 2, Schedule (amended by SI 2006/1003):

563 (1) Colonial Prisoners Removal Act 1884 s 3(1) (see **COMMONWEALTH** vol 13 (2009) PARA 849);

564 (2) United Nations Act 1946 (powers to order or direct removal of a person from United Kingdom conferred by Orders in Council made in exercise of power contained in s 1(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 808);

565 (3) Backing of Warrants (Republic of Ireland) Act 1965 s 2(1) (see **EXTRADITION** vol 17(2) (Reissue) PARA 1291);

566 (4) Immigration Act 1971 s 5(1) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 160), Sch 2 paras 8-10, 12-14 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 152, 153), Sch 3 para 1 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 163);

567 (5) Mental Health Act 1983 s 86(2)(a), (b) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 548);

568 (6) Repatriation of Prisoners Act 1984 ss 1(1), 2, 4(1) (see **PRISONS** vol 36(2) (Reissue) PARAS 555-556, 558);

569 (7) Extradition Act 1989 s 12(1) (see **EXTRADITION** vol 17(2) (Reissue) PARA 1193), Sch 1 para 8(2) (see **EXTRADITION** vol 17(2) (Reissue) PARA 1215);

570 (8) Criminal Justice (International Co-operation) Act 1990 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1411);

- 571 (9) Immigration and Asylum Act 1999 s 10 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 154);
- 572 (10) Immigration (European Economic Area) Regulations 2006, SI 2006/1003, reg 19(3) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 236); and
- 573 (11) International Criminal Court Act 2001 ss 5, 7, 15, 21, 32, 43 (see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 438 et seq).

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372. Power to make travel restriction order.

Where:

- 1252 (1) a person (the 'offender') has been convicted by any court of a post-commencement¹ drug trafficking offence²;
- 1253 (2) the court has determined that it would be appropriate to impose a sentence of imprisonment for that offence³; and
- 1254 (3) the term of imprisonment which the court considers appropriate is a term of four years or more⁴,

it is the duty of the court, on sentencing the offender:

- 1255 (a) to consider whether it would be appropriate for the sentence for the offence to include the making of a travel restriction order⁵ in relation to the offender⁶;
- 1256 (b) if the court determines that it is so appropriate, to make such travel restriction order in relation to the offender as the court thinks suitable in all the circumstances (including any other convictions of the offender for post-commencement drug trafficking offences in respect of which the court is also passing sentence)⁷; and
- 1257 (c) if the court determines that it is not so appropriate, to state its reasons for not making a travel restriction order⁸.

The order runs from the date of the offender's release from custody and not from the date of the sentence⁹. A travel restriction order made in relation to any person remains in force, notwithstanding the exercise of any prescribed removal power¹⁰ in relation to that person, except in so far as either the Secretary of State by order otherwise provides¹¹ or the travel restriction order is suspended or revoked¹².

1 In the Criminal Justice and Police Act 2001 s 33, 'post-commencement': (1) except in relation to an offence that is a drug trafficking offence by virtue of an order under s 34(1)(c) (see PARA 371 note 1), means committed after 1 April 2002 (ie the date on which s 33 was brought into force: see the Criminal Justice and Police Act 2001 (Commencement No 4 and Transitional Provisions) Order 2002, SI 2002/344) (Criminal Justice and Police Act 2001 s 33(6)(a)); and (2) in relation to an offence that is a drug trafficking offence by virtue of such an order, means committed after the coming into force of that order (s 33(6)(b)).

2 Criminal Justice and Police Act 2001 s 33(1)(a). As to the meaning of 'drug trafficking offence' see PARA 371 note 1.

3 Criminal Justice and Police Act 2001 s 33(1)(b).

4 Criminal Justice and Police Act 2001 s 33(1)(c).

5 As to travel restriction orders see PARA 371.

6 Criminal Justice and Police Act 2001 s 33(2)(a). As to the Court of Appeal's observations in relation to the exercise of the power to impose a travel restriction order see *R v Mee* [2004] EWCA Crim 629, [2004] 2 Cr App Rep (S) 434, [2004] Crim LR 487.

7 Criminal Justice and Police Act 2001 s 33(2)(b). See note 6. The court must consider the duration of the order in terms of how long it is necessary to protect the public from the risk posed by the offender, taking into account factors such as the offender's age, previous convictions, risk of re-offending and family connections: *R v Campbell (Michael)* [2004] EWCA Crim 2333, [2005] 1 Cr App Rep (S) 520. The period of restriction should be tailored to an offender to such a degree as the court feels able when balanced against the risk: *R v Mee* [2004] EWCA Crim 629, [2004] 2 Cr App Rep (S) 434. See also *R v Fuller (Ellinor)* [2005] EWCA Crim 1029, [2006] 1 Cr App Rep (S) 52.

8 Criminal Justice and Police Act 2001 s 33(2)(c). See note 6.

9 *R v Campbell (Michael)* [2004] EWCA Crim 2333, [2005] 1 Cr App Rep (S) 520.

10 As to the meaning of 'prescribed removal power' see PARA 371 note 14.

11 Criminal Justice and Police Act 2001 s 37(2)(a). At the date at which this volume states the law no such order had been made.

12 Criminal Justice and Police Act 2001 s 37(2)(b). The reference in the text to the suspension or revocation of a travel restriction order is a reference to suspension or revocation under s 35 (see PARA 373).

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373. Revocation and suspension of a travel restriction order.

The court by which a travel restriction order¹ has been made in relation to any person may:

- 1258 (1) on an application made by that person at any time which is both after the end of the minimum period² and not within three months after the making of any previous application for the revocation of the prohibition³, revoke the prohibition imposed by the order with effect from such date as the court may determine⁴; or
- 1259 (2) on an application made by that person at any time after the making of the order, suspend the prohibition imposed by the order for such period as the court may determine⁵.

A court to which an application for the revocation of the prohibition imposed on any person by a travel restriction order is made must not revoke that prohibition unless it considers that it is appropriate to do so in all the circumstances of the case and having regard, in particular, to:

- 1260 (a) that person's character⁶;
- 1261 (b) his conduct since the making of the order⁷; and
- 1262 (c) the offences of which he was convicted on the occasion on which the order was made⁸.

A court must not suspend the prohibition imposed on any person by a travel restriction order for any period unless it is satisfied that there are exceptional circumstances, in that person's case, that justify the suspension on compassionate grounds of that prohibition for that period⁹. In making any determination on an application for the suspension of the prohibition imposed on any person by a travel restriction order, a court must have regard¹⁰ to the matters mentioned in heads (a) to (c) above¹¹ and any other circumstances of the case that the court considers relevant¹².

Where the prohibition imposed on any person by a travel restriction order is suspended, it is the duty of that person:

- 1263 (i) to be in the United Kingdom¹³ when the period of the suspension ends¹⁴; and
- 1264 (ii) if the order contains a direction¹⁵ to deliver up his travel authorisation¹⁶), to surrender, before the end of that period, any authorisation¹⁷) returned or issued to that person, in respect of the suspension, by the Secretary of State¹⁸,

and an authorisation¹⁹) that is required to be so surrendered must be surrendered to the Secretary of State in such manner or by being sent to such address as the Secretary of State may direct at the time when he returns or issues it²⁰.

Where the prohibition imposed on any person by a travel restriction order is suspended for any period under these provisions, the end of the period of the prohibition imposed by the order is to be treated²¹ as postponed (or, if there has been one or more previous suspensions, further postponed) by the length of the period of suspension²².

- 1 As to travel restriction orders see PARA 371 et seq.
- 2 Criminal Justice and Police Act 2001 s 35(1)(a)(i). 'Minimum period': (1) in the case of a travel restriction order imposing a prohibition for a period of four years or less, means the period of two years beginning at the time when the period of the prohibition began (s 35(7)(a)); (2) in the case of a travel restriction order imposing a prohibition of more than four years but less than ten years, means the period of four years beginning at that time (s 35(7)(b)); and (3) in any other case, means the period of five years beginning at that time (s 35(7)(c)).
- 3 Criminal Justice and Police Act 2001 s 35(1)(a)(ii).
- 4 Criminal Justice and Police Act 2001 s 35(1)(a).
- 5 Criminal Justice and Police Act 2001 s 35(1)(b).
- 6 Criminal Justice and Police Act 2001 s 35(2)(a).
- 7 Criminal Justice and Police Act 2001 s 35(2)(b).
- 8 Criminal Justice and Police Act 2001 s 35(2)(c).
- 9 Criminal Justice and Police Act 2001 s 35(3).
- 10 Ie in addition to considering the matters mentioned in Criminal Justice and Police Act 2001 s 35(3) (see the text and note 9).
- 11 Criminal Justice and Police Act 2001 s 35(4)(a)-(c).
- 12 Criminal Justice and Police Act 2001 s 35(4)(d).
- 13 As to the meaning of 'United Kingdom' see PARA 9 note 2.
- 14 Criminal Justice and Police Act 2001 s 35(5)(a).
- 15 Ie under the Criminal Justice and Police Act 2001 s 33(4) (see PARA 371).
- 16 As to references to UK travel authorisations see PARA 371 note 5.
- 17 See note 16.
- 18 Criminal Justice and Police Act 2001 s 35(5)(b) (amended by the Identity Cards Act 2006 s 39(3)).
- 19 See note 16.
- 20 Criminal Justice and Police Act 2001 s 35(5) (as amended: see note 18).
- 21 Ie except for the purposes of the Criminal Justice and Police Act 2001 s 35(7) (see note 2).
- 22 Criminal Justice and Police Act 2001 s 35(6).

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374. Offences of contravening travel restriction orders.

A person who leaves the United Kingdom¹ at a time when he is prohibited from leaving it by a travel restriction order², and a person who is not in the United Kingdom at the end of a period during which a prohibition imposed on him by a travel restriction order has been suspended³, is guilty of an offence⁴.

A person who fails to comply:

- 1265 (1) with a direction contained in a travel restriction order to deliver up a travel authorisation⁵ to a court, or to cause such an authorisation⁶ to be delivered up⁷; or
- 1266 (2) with any duty imposed on him⁸ to surrender an authorisation⁹ to the Secretary of State¹⁰,

is also guilty of an offence¹¹.

No person is guilty of an offence under these provisions in respect of any act or omission required of him by an obligation imposed in the exercise of a prescribed removal power¹².

1 As to the meaning of 'United Kingdom' see PARA 9 note 2.

2 Criminal Justice and Police Act 2001 s 36(1). As to travel restriction orders see PARA 371 et seq.

3 Criminal Justice and Police Act 2001 s 36(2).

4 Criminal Justice and Police Act 2001 s 36(1), (2). A person who commits either offence is liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine or to both (s 36(1)(b), (2)(b)) and on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both (s 36(1)(a), (2)(a)). As from a day to be appointed the maximum term of six months referred to in s 36(1)(a), (2)(a) is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed. As to the statutory maximum see PARA 140.

5 As to references to UK passports and UK travel authorisations see PARA 371 note 5.

6 See note 5.

7 Criminal Justice and Police Act 2001 s 36(3)(a) (amended by the Identity Cards Act 2006 s 39(3)).

8 Ie by the Criminal Justice and Police Act 2001 s 35(5)(b) (see PARA 373).

9 See note 5.

10 Criminal Justice and Police Act 2001 s 36(3)(b) (as amended: see note 7).

11 Criminal Justice and Police Act 2001 s 36(3) (as amended: see note 7). A person who commits either offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: s 36(3) (as so amended). As from a day to be appointed the maximum term referred to in s 36(3) is increased to a maximum term of 51 weeks (see the Criminal Justice Act 2003 s 281(4), (5), (7) (not yet in force)), although this does not affect the penalty for any offence committed before that day (s 281(6)(b) (not yet in force)). At the date at which this volume states the law no such day had been appointed. As to the standard scale see PARA 142.

12 Criminal Justice and Police Act 2001 ss 36(4), 37(3). As to the prescribed removal powers see PARA 371 note 14.

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(2) RESTITUTIONARY ORDERS

(i) Compensation Orders

375. Compensation orders.

A compensation order is an order which may be made in respect of an offender requiring him to pay compensation for any personal injury¹, loss² or damage³ resulting from that offence⁴ or any other offence which is taken into consideration by the court in determining sentence⁵, or to make payments for funeral expenses⁶ or bereavement⁷ in respect of a death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road⁸.

1 Where a substantial sum of compensation for personal injury is contemplated, there should be up to date and detailed information as to the extent of the injury: *R v Cooper* (1982) 4 Cr App Rep (S) 55, [1982] Crim LR 308, CA; *R v Welch* (1984) 6 Cr App Rep (S) 13 [1984] Crim LR 242, CA.

2 The loss is the loss which the victim has actually suffered; and this may include a sum by way of interest: *R v Schofield* [1978] 2 All ER 705, 67 Cr App Rep 282, CA; and see also *R v Vivian* [1979] 1 All ER 48, 68 Cr App Rep 53, CA (order should not be made unless figure either agreed or approved). If property is stolen and recovered, the court is not entitled thereby to make a compensation order unless the victim can show a loss that has arisen from his having been without the property for a period of time: *R v Hier* (1976) 62 Cr App Rep 233, [1976] Crim LR 304, CA; *R v Boardman* (1987) 9 Cr App Rep (S) 74, [1987] Crim LR 430, CA; *R v Tyce* (1994) 15 Cr App Rep (S) 415, [1994] Crim LR 71, CA; *R v Sharkey* [1976] Crim LR 388, CA. See also *R v Cadamarteris* [1977] Crim LR 236, CA (stolen car dismantled and returned in pieces; no basis for compensation order as no assessable sum in loss or damage suffered as result of defendant's dishonesty and no evidence of difference in value). Where specimen counts are charged, the court cannot make an order in respect of the other offences which have not been taken into consideration: *R v Critchley*, *R v Tonks* (1993) 15 Cr App Rep (S) 627, [1994] Crim LR 309, CA; followed in *R v Hose* (1994) 16 Cr App Rep (S) 682, [1995] Crim LR 259, CA.

3 'Damage' may include compensation for fear and anxiety (*Bond v Chief Constable of Kent* [1983] 1 All ER 456, 76 Cr App Rep 56, DC (award made to compensate owner of house for damage caused when accused threw stone through owner's window)) or emotional distress (*R v Thomson Holidays Ltd* [1974] QB 592, 58 Cr App Rep 429, CA (see note 4)). There must be some evidence that the distress was experienced: *R v Vaughan* (1990) 12 Cr App Rep (S) 46, [1990] Crim LR 443, CA.

In the case of an offence under the Theft Act 1968 or the Fraud Act 2006, where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession is to be treated for these purposes as having resulted from the offence, however and by whomsoever the damage was caused: Powers of Criminal Courts (Sentencing) Act 2000 s 130(5) (amended by the Fraud Act 2006 Sch 1 para 29).

4 The injury, loss or damage need not be inflicted intentionally: see *R v Corbett* (1993) 14 Cr App Rep (S) 101, [1992] Crim LR 833, CA. It must result from the offence for which the compensation order is made: *R v Oddy* [1974] 2 All ER 666, 59 Cr App Rep 66, CA; *Berkeley v Orchard* [1975] Crim LR 225, DC (injury from taking controlled drugs not injury resulting from offence of unlawful possession of drug); *R v Boardman* (1987) 9 Cr App Rep (S) 74, [1987] Crim LR 430, CA (no loss resulting from theft; compensation order quashed); *R v Bateman*, *R v Blackwell* (1988) 10 Cr App Rep (S) 240, CA (no evidence of loss before judge; compensation order quashed); *Revenue and Customs Comrs v Duffy* [2008] EWHC 848 (Admin), [2008] 2 Cr App Rep (S) 593, [2008] Crim LR 734 (loss arising from fraudulent claims for tax credits). If the offender is acquitted of an offence alleged to have resulted in personal injury, loss or damage, but convicted of some other offence, a compensation order may not be made: *R v Halliwell* (1991) 12 Cr App Rep (S) 692, CA; *R v Graves* (1993) 14 Cr App Rep (S) 790, CA. As to whether injury, loss or damage caused by others in the course of a violent disorder or affray of which the offender has been convicted can be said to have resulted from his offence see *R v Derby* (1990) 12 Cr App Rep (S) 502, CA; *R v Taylor* (1993) 14 Cr App Rep (S) 276, [1993] Crim LR 317; *R v Geurtjens* (1993) 14 Cr App Rep (S) 280, [1993] Crim LR 317, CA; *R v Deary* (1993) 14 Cr App Rep (S) 648, [1993] Crim LR 318, CA; cf *R v Denness* [1996] 1 Cr App Rep (S) 159, [1995] Crim LR 750, CA. Quære whether an obligation to

pay costs in independent civil proceedings can ever come within the phrase 'loss or damage': see *Hammerton Cars Ltd v London Borough of Redbridge* [1974] 2 All ER 216, [1974] 1 WLR 484, DC. In determining whether loss or damage resulted from an offence, the principles of causation are not to be adopted; but the court must ask itself whether the loss or damage can fairly be said to have resulted to anyone from the relevant offence: *R v Thomson Holidays Ltd* [1974] QB 592, 58 Cr App Rep 429, CA (compensation order for modest amount in respect of emotional distress); and see also *Rowlston v Kenny* (1982) 4 Cr App Rep (S) 85, DC (the test in deciding whether a particular loss resulted from an offence is not whether the loss resulted solely from that offence, but whether it can fairly be said to have resulted from that offence; the fact that the defendant could have been charged with another offence provides no reason for refusing compensation if the loss can fairly be said to have resulted from the offence in respect of which he is convicted); and *Revenue and Customs Comrs v Duffy* (test is whether the loss could fairly be said to have resulted from the offences in question).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 130(1)(a). As to the making of compensation orders generally see PARA 376; as to appeals against compensation orders see PARA 382; and as to review of such orders see PARA 379. As to ordering compensation to be paid by an offender's parent or guardian see PARA 383. Where there is a subsequent material change to the offender's financial circumstances, an application should be made for review rather than an appeal: *R v Palmer* (1993) 15 Cr App Rep (S) 550, [1994] Crim LR 228, CA. As to the making of an order for payment to a person for personal injury, loss or damage out of the proceeds of disposal of property upon the making of a deprivation order under the Powers of Criminal Courts (Sentencing) Act 2000 when the offender does not have the means to permit the making of a compensation order see PARA 481. Where a compensation order has been made against any person in respect of an offence taken into consideration in determining his sentence: (1) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made (s 132(5)(a)); and (2) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted (s 132(5)(b)).

Where the Crown Court makes a compensation order against a person, then, if that person is before it, the Crown Court may order him to be searched: Powers of Criminal Courts (Sentencing) Act 2000 s 142(1)(c). Any money found on a person in such a search may be applied, unless the court otherwise directs, towards payment of the sum payable by him; and the balance, if any, must be returned to him: s 142(2).

6 A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses: Powers of Criminal Courts (Sentencing) Act 2000 s 130(9).

7 A compensation order in respect of bereavement may be made only for the benefit of a person for whose benefit a claim for damages for bereavement could be made under the Fatal Accidents Act 1976 s 1A (see **TORT** vol 97 (2010) PARA 488): Powers of Criminal Courts (Sentencing) Act 2000 s 130(10). The amount of compensation in respect of bereavement may not exceed the amount for the time being specified in the Fatal Accidents Act 1976 s 1A(3) (amended by SI 2002/644), ie £10,000: Powers of Criminal Courts (Sentencing) Act 2000 s 130(10).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 130(1)(b). A compensation order may be made in respect of injury, loss or damage (other than loss suffered by a person's dependants in consequences of his death) which was due to an accident arising out of the presence of a motor vehicle on a road only if: (1) it is in respect of damage which is treated by the Powers of Criminal Courts (Sentencing) Act 2000 s 130(5) (see note 3) as resulting from an offence under the Theft Act 1968 or the Fraud Act 2006 (Powers of Criminal Courts (Sentencing) Act 2000 s 130(6)(a) (amended by the Fraud Act 2006 Sch 1 para 29)); or (2) it is in respect of injury, loss or damage as respects which the offender is uninsured in relation to the use of the vehicle (Powers of Criminal Courts (Sentencing) Act 2000 s 130(6)(b)(i)) and compensation is not payable under any arrangements to which the Secretary of State is a party (s 130(6)(b)(ii)). The 'arrangements' referred to are the Secretary of State's arrangements with the Motor Insurers' Bureau; and 'payable' means payable now or in the future (and not 'immediately payable'): see *DPP v Scott* (1995) 16 Cr App Rep (S) 292, 159 JP 261, DC; *R v Austin* [1996] 2 Cr App Rep (S) 191, [1996] Crim LR 446, CA. Thus although a compensation order may validly be made in respect of a vehicle taken without lawful authority by the defendant, which is damaged in an accident while being driven by him, such an order cannot validly be made in respect of any other vehicle (or property) damaged in the accident: *Quigley v Stokes* [1977] 2 All ER 317, 64 Cr App Rep 198, DC; *Mayor v Oxford* (1980) 2 Cr App Rep (S) 280, DC; *R v Divers* [2006] EWCA Crim 169, [2006] All ER (D) 210 (Jan). Where a compensation order is made in respect of injury, loss or damage due to such an accident, the amount to be paid may include an amount representing the whole or part of any loss of or reduction in preferential rates of insurance attributable to the accident: Powers of Criminal Courts (Sentencing) Act 2000 s 130(7). For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 s 130(6), (7), an offender will not be regarded as uninsured merely because he does not disclose details of his insurance at the scene of the accident (*McDermott v DPP* [1997] RTR 474, (1996) 161 JP 244, DC), and a vehicle the use of which is exempted from insurance by the Road Traffic Act 1988 s 144 (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 938) is not uninsured for these purposes (Powers of Criminal Courts (Sentencing) Act 2000 s 130(8)).

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376. Making of compensation orders.

A compensation order¹ may be made by a court by or before which a person is convicted of an offence². Where the person in question is convicted of an offence the sentence for which is:

- 1267 (1) a sentence fixed by law³;
- 1268 (2) a life sentence for public protection⁴;
- 1269 (3) the required custodial sentence for possession of a firearm or using a person to mind a weapon⁵;
- 1270 (4) the specified minimum term for a third class A drug trafficking offence⁶; or
- 1271 (5) the specified minimum term for a third domestic burglary⁷,

the court by or before which he is convicted may make the compensation order in addition to dealing with him in any other way⁸. Where a court convicts a person of any other offence, it may exercise this power either as an alternative or in addition to dealing with the offender in any other way⁹. A court has power to make a joint and several order against joint offenders, but such an order should not be made if substantial justice can be achieved by orders made severally¹⁰. A court must give reasons, on passing sentence, if it does not make a compensation order in a case where it is empowered so to do¹¹.

It is not right, at least not in every case, to regard the imposition of a compensation order as being additional punishment¹². The making of a compensation order is not conditional on the existence of a civil cause of action¹³. It must be remembered by courts considering compensation orders that the civil remedy for damages still exists; the order is a quick and simple way of dealing with the claim in simple cases¹⁴.

¹ See PARA 375.

² Powers of Criminal Courts (Sentencing) Act 2000 s 130(1). The order may be made on an application or otherwise (s 130(1)), and the victim does not have to make an application for a compensation order: *Holt v DPP* [1996] 2 Cr App Rep (S) 314, [1996] Crim LR 524, CA (victim of theft had died before sentence). If it has not been raised by counsel, a judge who has a compensation order in mind must raise the matter so that it can be ventilated: *R v Stanley* (1990) 11 Cr App Rep (S) 446, [1990] Crim LR 208, CA. Where the offender has denied the particular items were stolen, the court should not make an order unless an application is made and the applicant prepared to adduce evidence that the items had been stolen: *R v Kneeshaw* [1975] QB 57, 58 Cr App Rep 439, CA. Where compensation is awarded in respect of numerous offences, there should be a separate order for each sum in respect of each offence: *R v Inwood* (1974) 60 Cr App Rep 70, CA.

³ Powers of Criminal Courts (Sentencing) Act 2000 s 130(2) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 117; the Violent Crime Reduction Act 2006 Sch 1 para 6; and the Criminal Justice and Immigration Act 2008 Sch 26 paras 40, 46). As to sentences fixed by law see PARA 15.

⁴ Powers of Criminal Courts (Sentencing) Act 2000 s 130(2) (as amended: see note 3). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 4.

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 130(2) (as amended: see note 3). As to the sentences referred to and when those sentences fall to be imposed see PARA 19 note 5.

⁶ Powers of Criminal Courts (Sentencing) Act 2000 s 130(2) (as amended: see note 3). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 6.

⁷ Powers of Criminal Courts (Sentencing) Act 2000 s 130(2) (as amended: see note 3). As to the sentence referred to and when that sentence falls to be imposed see PARA 19 note 7.

8 Powers of Criminal Courts (Sentencing) Act 2000 s 130(2) (as amended: see note 3). Where a court makes a confiscation order (see PARA 391 et seq) it is under no duty to take account of the order before making a compensation order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130: see the Proceeds of Crime Act 2002 s 13(2), (3)(a); and PARA 400. As to the position where a court makes both a confiscation order and an order for the payment of compensation under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 against the same person in the same proceedings see the Proceeds of Crime Act 2002 s 13(5), (6); and PARA 400. Where the court considers that it would be appropriate both to impose a fine and to make a compensation order (Powers of Criminal Courts (Sentencing) Act 2000 s 130(12)(a)), but that the offender has insufficient means to pay both an appropriate fine and appropriate compensation (s 130(12)(b)), the court must give preference to compensation (though it may impose a fine as well) (s 130(12)). When committing an offender for sentence, a magistrates' court should not make an order but should leave questions associated with sentence to be dealt with by the Crown Court: *R v Brogan* [1975] 1 All ER 879, 60 Cr App Rep 279, CA.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 130(1), (2). See note 8.

10 *R v Grundy*, *R v Moorhouse* [1974] 1 All ER 292, [1974] 1 WLR 139, CA.

11 Powers of Criminal Courts (Sentencing) Act 2000 s 130(3). The court does not have jurisdiction to hear an application for judicial review of a decision of the Crown Court not to make a compensation order (see *R (on the application of Faithfull) v Ipswich Crown Court* [2007] EWHC 2763 (Admin), [2008] 3 All ER 749, [2008] 1 WLR 1636); where a magistrates' court fails to make a compensation order as a result of an error of law the prosecution may appeal to the High Court by way of case stated (*Revenue and Customs Comrs v Duffy* [2008] EWHC 848 (Admin), [2008] 2 Cr App Rep (S) 593, [2008] Crim LR 734).

12 Thus a compensation order was upheld in addition to an immediate sentence of imprisonment: see *R v Dorton* (1987) 9 Cr App Rep (S) 514, [1988] Crim LR 254, CA; and see also *R v Love* [1999] 1 Cr App Rep (S) 484, [1999] Crim LR 171, CA.

13 *R v Chappell* (1984) 80 Cr App Rep 31, 6 Cr App Rep (S) 342, CA.

14 *R v Daly* [1974] 1 All ER 290, [1974] 1 WLR 133, CA; *R v Inwood* (1974) 60 Cr App Rep 70 at 73, CA; *R v Donovan* (1981) 3 Cr App Rep (S) 192, [1981] Crim LR 723, CA (case in question too complex for a type of case for which compensation order was designed); *R v Ramsey* (1987) 9 Cr App Rep (S) 251, [1987] Crim LR 714, CA (compensation orders are not intended to be straight alternatives to civil process; they are useful where the amounts involved are not substantial and the means to pay are established; but the courts must understand the limits of a compensation order); *R v Barney* (1989) 11 Cr App Rep (S) 448, [1990] Crim LR 209, CA (compensation order some token of remorse on offender's behalf as well as redressing private loss of victim, but otherwise wholly independent of sentencing exercise); *R v Bewick* [2007] EWCA Crim 3297, [2008] 2 Cr App Rep (S) 184 (complex compensation proceedings should not be dealt with by the Crown Court and there should be no 'cheap and convenient' short cut where there were difficult issues of fact and law to be decided).

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377. Amount of compensation and the defendant's means.

The compensation to be paid under a compensation order¹ must generally be of such amount as the court considers appropriate², having regard to any evidence and to any representations that are made by or on behalf of the defendant or the prosecutor³.

¹ See PARA 375.

² The compensation to be paid under a compensation order made by a magistrates' court in respect of any offence of which the court has convicted the offender may not exceed £5,000 (Powers of Criminal Courts (Sentencing) Act 2000 s 131(1)); and the compensation or total compensation to be paid under a compensation order or compensation orders made by a magistrates' court in respect of any offence or offences taken into consideration in determining sentence may not exceed the difference, if any, between the amount or total amount which is the maximum for the offence or offences of which the offender has been convicted (s 131(2) (a)) and the amount or total amounts (if any) which are in fact ordered to be paid in respect of that offence or those offences (s 131(2)(b)).

³ Powers of Criminal Courts (Sentencing) Act 2000 s 130(4). The effect of s 130(4) is to reduce the burden of proof required (which had been laid down in *R v Vivian* [1979] 1 All ER 48, 68 Cr App Rep 53, CA; *R v Amey*, *R v James* [1983] 1 All ER 865, 76 Cr App Rep 206, CA) for establishing the criteria for a compensation order, but a trial judge may not pluck a figure out of the air and have no regard to whether the offender can meet it; there must be some evidence of means (*R v Swann*, *R v Webster* (1984) 6 Cr App Rep (S) 22, [1984] Crim LR 300, CA). The court may make assessments and approximations where the evidence is scanty or incomplete, and it may then make an order which is appropriate. However, where the defendant is challenging the basis on which any compensation can be paid, justice requires that he should have a proper opportunity to test the grounds on which the order is to be made against him; it is for the prosecution to place evidence before the court (*R v Horsham Justices, ex p Richards* [1985] 2 All ER 1114, 82 Cr App Rep 254, DC; see also *R v Watson* (1990) 12 Cr App Rep (S) 508, CA; *R v Clelland* (1991) 12 Cr App Rep (S) 697, CA), and criminal courts should not become involved in complicated investigations as to the fact, or amount, of loss: *R v Kneeshaw* [1975] QB 57, 58 Cr App Rep 439, CA; *Hyde v Emery* (1984) 6 Cr App Rep (S) 206, DC; *R v Briscoe* (1994) 15 Cr App Rep (S) 699, CA; *R v White* [1996] 2 Cr App Rep (S) 58, CA.

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378. Requirement to take account of defendant's means.

In determining whether to make a compensation order¹ against any person, and in determining the amount to be paid by any person under such an order, the court must have regard to his means² so far as they appear or are known to the court³. Excessively long periods of payment must not be ordered⁴.

¹ See PARA 375.

² Compensation orders, which may appear at the trial to the convicted person to be a lifeline, may, however, become a millstone round his neck, when he is released from prison; they may be counterproductive, and force him back into crime to find the money: *R v Inwood* (1974) 60 Cr App Rep 70, CA. It is no use making a compensation order if there is no realistic possibility of it being complied with: *R v Webb*, *R v Davies* (1979) 1 Cr App Rep (S) 16, [1979] Crim LR 466, CA; *R v Grafton* (1979) 1 Cr App Rep (S) 305, CA (realistic sum to be paid after release; compensation order quashed because no immediate prospect of work and little chance of reconciliation with husband; appellant should start her life again with a clean sheet after imprisonment); *R v Parker* (1981) 3 Cr App Rep (S) 278, [1982] Crim LR 130, CA (appellant had neither means nor any immediate prospect of obtaining means). A compensation order should not be made in conjunction with a custodial sentence if its effect would be to subject the offender on discharge from custody to a financial burden which he might not be able to meet and which might induce him to re-offend to satisfy the order: *R v Panayiotou* (1989) 11 Cr App Rep (S) 535, [1990] Crim LR 349, CA. See also *R v Clark* (1991) 13 Cr App Rep (S) 124, CA; *R v Love* [1999] 1 Cr App Rep (S) 484, [1999] Crim LR 171, CA. The court must be satisfied after sufficient inquiry that the defendant has the financial resources to pay the order: *R v Phillips* (1988) 10 Cr App Rep (S) 419, [1989] Crim LR 160, CA. A compensation order is wrong in principle when coupled with an immediate sentence of imprisonment on a person who has many debts and in respect of whom there is no evidence of resources: *R v Shenton* (1979) 1 Cr App Rep (S) 81, CA; *R v Morgan* (1982) 4 Cr App Rep (S) 358, CA. This principle does not apply, however, where a person has good prospects so that the compensation order appears to be a reasonable addition to a modest prison sentence for a serious crime: *R v Townsend* (1980) 2 Cr App Rep (S) 328, CA. Compensation orders should not be made where there is any doubt as to the liability to compensate or where there is a real doubt as to whether the convicted person can find the compensation: *R v Inwood* (1974) 60 Cr App Rep 70, CA.

In assessing means, the court is not limited to considering the proceeds of the relevant offence: *R v Copley* (1979) 1 Cr App Rep (S) 55, CA. An apparently onerous burden imposed by a compensation order may be justifiable when its impact can to some extent be ameliorated, since allowing someone to continue to live in a house bought with the proceeds of the theft is not only unacceptable, but contrary to propriety and justice: *R v Workman* (1979) 1 Cr App Rep (S) 335, [1980] Crim LR 189, CA. See also *R v Harrison* (1980) 2 Cr App Rep (S) 313, DC (compensation order quashed which expected sale of matrimonial home; garage business defrauded could have sought judgment for full sum in civil action which would be able to deal with the complex issues involved); *R v Blackmore* (1984) 6 Cr App Rep (S) 244, DC; *R v Heath* (1984) 6 Cr App Rep (S) 397, [1985] Crim LR 247, DC.

If the only asset available to satisfy the compensation order is the matrimonial home which is still in occupation of other members of the family, such an order will be inappropriate: *R v Butt* (1986) 8 Cr App Rep (S) 216, [1986] Crim LR 755, DC; and see also *R v Hackett* (1988) 10 Cr App Rep (S) 388, [1989] Crim LR 230, CA; *R v Holah* (1989) 11 Cr App Rep (S) 282, [1989] Crim LR 751, CA. However, there can be exceptions: see *R v McGuire* (1991) 13 Cr App Rep (S) 332, CA (no general principle that compensation order should not be made if it would force offender to sell matrimonial home; the appellant would have enough left to buy cheaper home and the compensation order was upheld). See also *R v Griffiths*, *R v Griffiths* [2001] EWCA Crim 2093, (2001) Times, 17 October (a matrimonial home may be sold in order to satisfy a compensation order, even if it renders a wife and children homeless, if the wife, as well as the husband, is implicated in the offence in respect of which the order is made).

It is for the trial court to ascertain the value of a specific article out of the sale of which the compensation order will be paid. If the article which could be used to raise the necessary funds cannot be properly valued, a compensation order should not be made: *R v Chambers* (1981) 3 Cr App Rep (S) 318, [1982] Crim LR 189, DC; and see also *R v Heads*, *R v Redfern* (1981) 3 Cr App Rep (S) 322, [1982] Crim LR 189, DC (compensation order with regard to H was not interfered with because of the ample evidence before the court with regard to the value of his assets; but in the case of R the estimate was vague and subsequently proved wrong, and that

compensation order was reduced in amount); *R v Stewart* (1983) 5 Cr App Rep (S) 320, [1983] Crim LR 830, CA (appeal dismissed in respect of compensation order; appellant went to the Court of Appeal without any evidence at all to show that the value which the judge put on his car was in any way erroneous).

No burden is laid on the prosecution to establish the defendant's means and the prosecution has no duty to conduct a detailed inquiry into the defendant's means: *R v Johnstone* (1982) 4 Cr App Rep (S) 141, [1982] Crim LR 537, CA. As a general rule, apportionment, and not selection, should be the adopted course where there are insufficient means to meet every established claim; however, the court may depart from that basis where there are strong grounds for doing so, and in such cases the court may select some of the claimants and order that compensation be paid to them to the exclusion of the others: *R v Amey*, *R v James* [1983] 1 All ER 865, 76 Cr App Rep 206, CA.

Counsel and solicitors for the defendant must make the most careful examination as to means; documents should be obtained and evidence on affidavit or orally should be given; and proceedings may be adjourned for this purpose: *R v Huish* (1985) 7 Cr App Rep (S) 272, [1985] Crim LR 800, CA; and see also *R v Coughlin* (1984) 6 Cr App Rep (S) 102, [1984] Crim LR 432, CA (counsel must not merely utter without examination all that he is told by his client); *R v Bond* (1986) 8 Cr App Rep (S) 11, [1986] Crim LR 413, CA; *R v Slack* (1987) 9 Cr App Rep (S) 65, [1987] Crim LR 428, CA; *R v Roberts (William)* (1987) 9 Cr App Rep (S) 275, [1987] Crim LR 712, CA.

It is not right to make a compensation order without some inquiry about the offender's means; if information about his means is not available from evidence heard at the trial, an inquiry should be made first to see if there are any assets which could properly be made the subject of a compensation order, and then to decide the period over which the order should be paid: *R v Holah*.

Where an offender is unable to make compensation this should not affect the length of his sentence; he must not be given the impression by the sentencing judge that he has therefore received a longer custodial sentence than would otherwise be regarded as proper: *R v Barney* (1989) 11 Cr App Rep (S) 448, [1990] Crim LR 209, CA.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 130(11).

4 See *R v Daly* [1974] 1 All ER 290, 58 Cr App Rep 333, CA (payment period initially six years; period substantially reduced on appeal; held that the machinery of the compensation order should not be used where recompense involves a weekly payment over too long a period); *R v McCullough* (1982) 4 Cr App Rep (S) 98, [1982] Crim LR 461, CA; *R v Makin* (1982) 4 Cr App Rep (S) 180, CA; *R v Holden* (1985) 7 Cr App Rep (S) 7, [1985] Crim LR 397, CA; *R v Hills* (1986) 8 Cr App Rep (S) 199, [1986] Crim LR 756, CA. The previous principle was confirmed in *R v Broughton* (1986) 8 Cr App Rep (S) 379, [1987] Crim LR 140, CA (as a general guideline with regard to compensation orders a period of 12 months or thereabouts should normally be considered for instalment payments; a margin of three months would seem to be the maximum); and see also *R v Ramsey* (1987) 9 Cr App Rep (S) 251, [1987] Crim LR 714, CA; *R v Roberts* (1987) 9 Cr App Rep (S) 275, [1987] Crim LR 712, CA; *R v Diggles* [1988] Crim LR 851, CA (improper to make order which could only be activated when the defendant has sufficient means); *R v Holah* (1989) 11 Cr App Rep (S) 282, [1989] Crim LR 751, CA. A period of two years, or exceptionally three years, for payment would not be too long: *R v Olliver*, *R v Olliver* (1989) 11 Cr App Rep (S) 10, [1989] Crim LR 387, CA; *R v Yehou* [1997] 2 Cr App Rep (S) 48, CA.

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379. Review of compensation orders.

At any time before the person against whom a compensation order has been made has paid into court the whole of the compensation which the order requires him to pay¹, but at a time when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal² on which the order could be varied or set aside³, the magistrates' court for the time being having functions in relation to the enforcement⁴ of the order may, on the application of the person against whom it was made⁵, discharge the order, or reduce the amount which remains to be paid⁶, if it appears to the court:

- 1272 (1) that the injury, loss or damage in respect of which the order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order⁷;
- 1273 (2) in the case of an order in respect of the loss of any property, that the property has been recovered by the person in whose favour the order was made⁸;
- 1274 (3) that the means of the person against whom the order was made are insufficient to satisfy in full both the order and a confiscation order⁹ made against him in the same proceedings¹⁰; or
- 1275 (4) that the person against whom the order was made has suffered a substantial reduction in his means which was unexpected at the time when the compensation order was made, and that his means seem unlikely to increase for a considerable period¹¹.

However, where the order was made by the Crown Court, a magistrates' court may not exercise any of the above powers in a case where it is satisfied as mentioned in head (3) or head (4) above unless it has first obtained the consent of the Crown Court¹².

1 Powers of Criminal Courts (Sentencing) Act 2000 s 133(2)(b). As to the making of compensation orders see PARAS 375, 376; as to the amount of compensation and the defendant's means see PARA 377.

2 As to appeals against compensation orders see PARA 382.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 133(2)(a).

4 As to enforcement see PARA 380.

5 An application under the Powers of Criminal Courts (Sentencing) Act 2000 s 133 for the review of a compensation order must be by complaint: CrimPR 53.1(1). The court officer for the magistrates' court to which the complaint is made must send a letter to the person for whose benefit the compensation order was made, inviting him to make observations and to attend any hearing of the complaint and advising him of his right to be heard: CrimPR 53.1(2).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 133(1).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 133(3)(a).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 133(3)(b).

9 Ie under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) (see PARA 391 et seq) or the Criminal Justice Act 1988 Pt VI (ss 71-103) (largely repealed).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 133(3)(c) (amended by the Proceeds of Crime Act 2002 Sch 11 paras 1, 37(1), (3)).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 133(3)(d).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 133(4). Where a compensation order has been made on appeal, for the purposes of s 133(4) it is deemed: (1) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court (s 133(5)(a)); and (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (s 133(5)(b)).

UPDATE

379 Review of compensation orders

NOTE 5--CrimPR 53.1 now Criminal Procedure Rules 2010, SI 2010/60, r 53.1.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(2) RESTITUTIONARY ORDERS/(i) Compensation Orders/380. Enforcement of compensation orders.

380. Enforcement of compensation orders.

A person in whose favour a compensation order is made¹ is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal² on which the order could be varied or set aside³.

1 As to the making of compensation orders see PARAS 375, 376; as to the amount of compensation and the defendant's means see PARA 377.

2 As to appeals against compensation orders see PARA 382.

3 Powers of Criminal Courts (Sentencing) Act 2000 s 132(1). A magistrates' clerk may not issue third party debt order proceedings in respect of a compensation order suspended pending appeal: *Gooch v Ewing (Allied Irish Bank Ltd, garnishee)* [1986] QB 791, [1985] 3 All ER 654, CA (decided under the Criminal Appeal Act 1968 s 42 (repealed)). Criminal Procedure Rules may make provision regarding the way in which the magistrates' court for the time being having functions, by virtue of the Administration of Justice Act 1970 s 41(1) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 878), in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended: Powers of Criminal Courts (Sentencing) Act 2000 s 132(2) (amended by SI 2004/2035). At the date at which this volume states the law no such rules had been made.

Where in the case specified in the Administration of Justice Act 1970 Sch 9 para 10 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2100) the Crown Court thinks that the period for which the person subject to the order is otherwise liable to be committed to prison for default under the order is insufficient, it may specify a longer period for that purpose; and then in the case of default: (1) the specified period is to be substituted as the maximum for which the person may be imprisoned under the Magistrates' Courts Act 1980 s 76 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 860) (Administration of Justice Act 1970 s 41(8)(a) (s 41(8) substituted, and s 41(8A) added, by the Criminal Justice Act 1988 s 106; repealed by the Criminal Justice Act 1991 s 170(2), Sch 16; re-enacted by virtue of the Criminal Justice Act 1991 s 23(3)); and (2) the Administration of Justice Act 1970 Sch 4 para 2 applies, with any necessary modifications, for the reduction of the specified period where, at the time of the person's imprisonment, he has made part payment under the order (s 41(8)(b) (as so substituted)). However, the Crown Court may not so specify a period of imprisonment longer than that which it could order a person to undergo on imposing on him a fine equal in amount to the sum required to be paid by the order: s 41(8A) (as so added).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(2) RESTITUTIONARY ORDERS/(i) Compensation Orders/381. Effect of compensation order on subsequent award of damages in civil proceedings.

381. Effect of compensation order on subsequent award of damages in civil proceedings.

Where a compensation order has been made¹ in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined², the damages in the civil proceedings must be assessed without regard to the order; but the claimant may recover only an amount equal to the aggregate of:

- 1276 (1) any amount by which they exceed the compensation³; and
- 1277 (2) a sum equal to any portion of the compensation which he fails to recover⁴,

and may not enforce the judgment, so far as it relates to a sum such as is mentioned in head (2) above, without the leave of the court⁵.

¹ As to the making of compensation orders see PARAS 375, 376; as to the amount of compensation and the defendant's means see PARA 377.

² Powers of Criminal Courts (Sentencing) Act 2000 s 134(1).

³ Powers of Criminal Courts (Sentencing) Act 2000 s 134(2)(a).

⁴ Powers of Criminal Courts (Sentencing) Act 2000 s 134(2)(b).

⁵ Powers of Criminal Courts (Sentencing) Act 2000 s 134(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(2) RESTITUTIONARY ORDERS/(i) Compensation Orders/382. Suspension of compensation orders.

382. Suspension of compensation orders.

A person in whose favour a compensation order is made¹ is not entitled to receive the amount due to him until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside²; and provision may be made³ regarding the way in which the magistrates' court for the time being having functions⁴ in relation to the enforcement of a compensation order is to deal with money paid in satisfaction of the order where the entitlement of the person in whose favour it was made is suspended⁵.

The Court of Appeal may by order annul or vary any compensation order made by the court of trial, although the conviction is not quashed; and the order, if annulled, does not take effect and, if varied, takes effect as varied⁶. Where the Supreme Court restores a conviction, it may make any compensation order which the court of trial could have made⁷.

1 As to the making of compensation orders see PARAS 375, 376; as to the amount of compensation and the defendant's means see PARA 377.

2 See the Powers of Criminal Courts (Sentencing) Act 2000 s 132(1); and PARA 380.

3 Ie by virtue of the Criminal Procedure Rules.

4 Ie by virtue of the Administration of Justice Act 1970 s 41(1): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2100.

5 See the Powers of Criminal Courts (Sentencing) Act 2000 s 132(2); and PARA 380.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 132(3).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 132(4) (amended by the Constitutional Reform Act 2005 Sch 9 para 9). Where an order is made under the Powers of Criminal Courts (Sentencing) Act 2000 s 132(3) or (4), the Court of Appeal or the Supreme Court must make such order for the payment of a surcharge under the Criminal Justice Act 2003 s 161A (see PARA 158), or such variation of the order of the Crown Court under that provision, as is necessary to secure that the person's liability under that provision is the same as it would be if he were being dealt with by the Crown Court: Powers of Criminal Courts (Sentencing) Act 2000 s 132(4A) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 49). As to the Supreme Court see PARA 53 note 1.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(2) RESTITUTIONARY ORDERS/(ii) Orders that Parents Pay Fines, Surcharges, Costs or Compensation/383. Fines, costs, and compensation.

(ii) Orders that Parents Pay Fines, Surcharges, Costs or Compensation

383. Fines, costs, and compensation.

Where a young offender commits an offence which causes substantial loss or damage, a compensation order may be made against him with an order to his parent or guardian to pay, based on the means of the parent or guardian rather than those of the child¹. It is provided that where:

1278 (1) a child or young person (that is, any person under 18)² is convicted of any offence for the commission of which a fine or costs may be imposed, or a compensation order³ may be made⁴; and

1279 (2) the court is of opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment⁵,

the court must order that the fine, compensation or costs awarded be paid by the parent or guardian⁶ of the child or young person instead of by the child or young person himself⁷, unless the court is satisfied that the parent or guardian cannot be found⁸ or that it would be unreasonable to make an order for payment, having regard to the circumstances of the case⁹.

Where a court would otherwise¹⁰ order a child or young person to pay a surcharge¹¹, the court must order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself¹², unless the court is satisfied either that the parent or guardian cannot be found¹³ or that it would be unreasonable to make an order for payment, having regard to the circumstances of the case¹⁴.

Where a court would¹⁵ impose a fine on a child or young person for:

1280 (a) breach of the requirements of supervision under a detention and training order¹⁶;

1281 (b) breach of the requirements of supervision under a secure training order¹⁷;

1282 (c) breach of a reparation order¹⁸;

1283 (d) breach of a youth rehabilitation order¹⁹; or

1284 (e) until a day to be appointed, breach of an attendance centre order or of attendance centre rules²⁰,

the court must order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself²¹, unless the court is satisfied that the parent or guardian cannot be found²² or that it would be unreasonable to make an order for payment, having regard to the circumstances of the case²³. In the case of a young person aged 16 or over these provisions have effect as if, instead of imposing a duty, they conferred a power to make such an order as is mentioned in those provisions²⁴.

Where a magistrates' court would²⁵ have power to commit to prison a person under the age of 18 for a default consisting in failure to pay, or want of sufficient distress (or, as from a day to

be appointed, goods) to satisfy, a sum adjudged to be paid by a conviction²⁶, the court may make:

1285 (i) an order requiring the defaulter's parent or guardian²⁷ to enter into a recognisance to ensure that the defaulter pays so much of that sum as remains unpaid²⁸; or

1286 (ii) an order directing so much of that sum as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter²⁹.

An order under head (i) or head (ii) above³⁰ may not, however, be made by a magistrates' court in consequence of a default of a person under the age of 18 years consisting in failure to pay, or want of sufficient distress (or, as from a day to be appointed, goods) to satisfy, a sum adjudged to be paid by a conviction unless the court has since the conviction inquired into the defaulter's means in his presence on at least one occasion³¹. Until a day to be appointed a corresponding restriction applies in relation to an order for attendance at an attendance centre; and as from that day the restriction applies in relation to a youth default order³². An order under head (1) or head (2) above may also not be made by a magistrates' court unless the court is satisfied that the defaulter has, or has had since the date on which the sum in question was adjudged to be paid, the means to pay the sum or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected, to pay it³³.

1 See the Powers of Criminal Courts (Sentencing) Act 2000 s 137; the Magistrates' Courts Act 1980 s 81; and the text and notes 2-36.

2 As to the meanings of 'child' and 'young person' see PARA 5 note 3.

3 As to the making of compensation orders see PARA 375 et seq.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 137(1)(a).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 137(1)(b).

6 As to the meaning of 'guardian' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 747 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 s 163). In relation to a child or young person for whom a local authority has parental responsibility and who is either in its care (s 137(8)(a)) or is provided with accommodation by it in the exercise of any functions (in particular those under the Children Act 1989) which are social services functions within the meaning of the Local Authority Social Services Act 1970 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 588; **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARAS 1005-1006) (Powers of Criminal Courts (Sentencing) Act 2000 s 137(8)(b) (amended by SI 2001/2237; SI 2002/808)), references in the Powers of Criminal Courts (Sentencing) Act 2000 s 137 to his 'parent' or 'guardian' are references to that authority (s 137(8)). As to the meaning of 'local authority' for these purposes see the Children Act 1989 s 105(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 138 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 ss 137(9), 138(5)). As to the meaning of 'parental responsibility' for these purposes see the Children Act 1989 s 3; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 s 137(9)). A company providing residential accommodation for young persons in a local authority's care is not a parent or guardian: *Marlowe Child and Family Services Ltd v DPP* [1998] 2 Cr App Rep (S) 438, [1998] Crim LR 594, DC. For the purposes of an order under these provisions against a local authority neither the Criminal Justice Act 2003 s 164(1) (duty to inquire into financial circumstances: see PARA 144) nor the Powers of Criminal Courts (Sentencing) Act 2000 s 130(11) (determination of compensation order: see PARA 378) applies: s 138(2) (ss 136(2), 138(1)(a), (2), (4) amended by the Criminal Justice Act 2003 Sch 32 paras 90, 118, 119).

7 An order under the Powers of Criminal Courts (Sentencing) Act 2000 s 137 may be made against a parent or guardian who, having been required to attend, has failed to do so (s 137(5)); but otherwise an order may not be made under s 137 without giving the parent or guardian an opportunity of being heard (s 137(4)). Where the Crown Court makes against a person an order under s 137 then, if that person is before it, the Crown Court may order him to be searched: s 142(1)(d) (ss 136(1), 137(3), 142(1)(d) amended by the Domestic Violence, Crime and Victims Act 2004 Sch 10 paras 50, 51, 53). A parent or guardian may appeal to the Crown Court against an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 137 made by a magistrates' court (s 137(6)); and a parent or guardian may appeal to the Court of Appeal against an order under s 137 made by the Crown

Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction (s 137(7)).

For the purposes of any order under s 137 made against a parent or guardian of a child or young person:

- 574 (1) the Criminal Justice Act 2003 s 164 (fixing of fines: see PARA 144) has effect as if any reference in the Powers of Criminal Courts (Sentencing) Act 2000 s 137(1)-(4) to the financial circumstances of the offender were a reference to the financial circumstances of the parent or guardian, and as if s 137(5) were omitted (s 138(1)(a) (as amended: see note 6));
- 575 (2) s 130(11) (determination of compensation order: see PARA 378) has effect as if any reference to the means of the person against whom the compensation order is made were a reference to the financial circumstances of the parent or guardian (s 138(1)(b));
- 576 (3) s 130(12) (preference to be given to compensation if insufficient means to pay both compensation and a fine: see PARA 376) has effect as if the reference to the offender were a reference to the parent or guardian (s 138(1)(c)); and
- 577 (4) the Criminal Justice Act 2003 s 161A(3) (surcharges: see PARA 158) and s 161A(4A) (fixing of fines: see PARA 158) have effect as if any reference in those provisions to the offender's means were a reference to those of the parent or guardian (Powers of Criminal Courts (Sentencing) Act 2000 s 138(1)(za) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 52)).

In relation to an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 137 made against a local authority, s 138(1) has effect subject to s 138(2) (see note 6): s 138(1).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 137(1)(i).

9 Powers of Criminal Courts (Sentencing) Act 2000 s 137(1)(ii). Where a parent, guardian or local authority (as the case may be) is found to have done everything that he or it reasonably and properly can to protect the public from a young offender, it is wholly unreasonable and unjust that it should bear a financial penalty: *R v Sheffield Crown Court, ex p Clarkson* (1986) 8 Cr App Rep (S) 454, DC; *D v DPP, R v DPP, R v Burnley Crown Court, ex p Lancashire County Council, Preston Crown Court, ex p Lancashire County Council* (1995) 16 Cr App Rep (S) 1040, DC; *R v J-B* [2004] EWCA Crim 14, [2004] 2 Cr App Rep (S) 211, [2004] Crim LR 390. Moreover, it is unreasonable to make a compensation order against a parent, guardian or local authority (as the case may be) unless there is a causative link between the default of that parent, guardian or local authority and the commission of the offence by the juvenile: *Bedfordshire County Council v DPP* [1996] 1 Cr App Rep (S) 322, [1995] Crim LR 962, DC; *R v J-B*.

For the purposes of any order under the Powers of Criminal Courts (Sentencing) Act 2000 s 137, where the parent or guardian of an offender who is a child or young person:

- 578 (1) has failed to comply with an order under s 136 (power to order statement as to financial circumstances of parent or guardian) (s 138(3)(a)); or
- 579 (2) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances (s 138(3)(b)),

and the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances, it may make such determination as it thinks fit (s 138(3)).

Before exercising its powers under s 137, the court may make a financial circumstances order (see PARA 146) with respect to the parent or (as the case may be) guardian: s 136(1) (as amended: see note 7). The provisions of the Criminal Justice Act 2003 s 162(4)-(6) (see PARA 146) apply to such an order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 137 as they apply to an order under the Criminal Justice Act 2003 s 162: Powers of Criminal Courts (Sentencing) Act 2000 s 136(2) (as amended: see note 6).

Where a court has, in fixing the amount of a fine, determined the financial circumstances of a parent or guardian under s 138(3), the Criminal Justice Act 2003 s 165 (remission of fines: see PARA 147) has effect (so far as applicable) as it has effect in the case mentioned in s 165(1) (see PARA 147), but as if the reference in s 165(2) to the offender's financial circumstances were a reference to the financial circumstances of the parent or guardian: Powers of Criminal Courts (Sentencing) Act 2000 s 138(4) (as amended: see note 6).

10 Ie but for the Powers of Criminal Courts (Sentencing) Act 2000 s 137(1A) (see the text and notes 11-14).

11 Ie under the Criminal Justice Act 2003 s 161A (see PARA 158).

12 In connection with the making of such an order see the Powers of Criminal Courts (Sentencing) Act 2000 ss 136, 137(4)-(7), 138; and notes 7, 9.

13 Powers of Criminal Courts (Sentencing) Act 2000 s 137(1A)(a) (s 137(1A) added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 51).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 137(1A)(b) (as added: see note 13).

15 Ie but for the Powers of Criminal Courts (Sentencing) Act 2000 s 137(2) (see the text and notes 16-23).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(e). The fine referred to in the text is a fine under s 104(3)(b) (see PARA 93).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(f). The fine referred to in the text is a fine under the Criminal Justice and Public Order Act 1994 s 4(3)(b) (repealed).

18 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(d) (amended by the Criminal Justice and Courts Services Act 2000 s 6(2), Sch 4 Pt 1 para 57(c)). The fine referred to in the text is a fine under Sch 8 para 2(2) (a) (see PARA 247).

19 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(za) (added by the Criminal Justice and Immigration Act 2008 Sch 4 Pt 1 para 57(a)). The fine referred to in the text is a fine under the Criminal Justice and Immigration Act 2008 Sch 2 para 6(2)(a) or Sch 2 para 8(2)(a) (see PARAS 214, 215).

20 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(b) (prospectively repealed by the Criminal Justice and Immigration Act 2008 Sch 4 Pt 1 para 57(b)). The fine referred to in the text is a fine under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 5 para 2(1)(a) (see PARA 268).

21 In connection with the making of such an order see the Powers of Criminal Courts (Sentencing) Act 2000 ss 136, 137(4)-(7), 138; and notes 7, 9.

22 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(i).

23 Powers of Criminal Courts (Sentencing) Act 2000 s 137(2)(ii).

24 Powers of Criminal Courts (Sentencing) Act 2000 s 137(3) (as amended: see note 7).

25 Ie but for the Powers of Criminal Courts (Sentencing) Act 2000 s 89 (see PARA 11).

26 Magistrates' Courts Act 1980 s 81(1) (s 81(1), (3), (8) amended by the Criminal Justice Act 1991 Sch 8 para 6(2); and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 67; Magistrates' Courts Act 1980 s 81(1), (3) prospectively further amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 paras 45, 50). At the date at which this volume states the law no day had been appointed for the coming into force of the last-cited amendment. For these purposes, 'sum adjudged to be paid by a conviction' means any fine, costs, compensation or other sum adjudged to be paid by an order made on a finding of guilt, including an order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (compensation orders: see PARA 375); Magistrates' Courts Act 1980 s 81(8) (as so amended).

27 For these purposes, 'guardian', in relation to a person under 18, means a person appointed, according to law, to be his guardian, or appointed by order of a court of competent jurisdiction: see the Magistrates' Courts Act 1980 s 81(8) (as amended: see note 26).

28 Magistrates' Courts Act 1980 s 81(1)(a) (as amended: see note 26). An order under s 81(1)(a) may not be made in respect of a defaulter unless the parent or guardian in question consents: s 81(2)(a).

29 Magistrates' Courts Act 1980 s 81(1)(b) (as amended: see note 26). An order under s 81(1)(b) may not be made unless the court is satisfied in all the circumstances that it is reasonable to make the order: s 81(2)(b). An order under s 81(1) may be made in pursuance of s 81(1)(b) against a parent or guardian who, having been required to attend, has failed to do so; but, save as aforesaid, an order under s 81(1) may not be made in pursuance of s 81(1)(b) without giving the parent or guardian an opportunity of being heard: s 81(5). A parent or guardian may appeal to the Crown Court against an order under s 81(1)(b): s 81(6). Any sum ordered under s 81(1)(b) to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence: s 81(7).

30 Ie an order under the Magistrates' Courts Act 1980 s 81(1) (see the text and notes 25-29).

31 Magistrates' Courts Act 1980 s 81(3)(b) (as amended and prospectively amended: see note 26).

32 Magistrates' Courts Act 1980 s 81(3)(a) (as amended (see note 26); prospectively substituted by the Criminal Justice and Immigration Act 2008 Sch 26 Pt 1 para 1). At the date at which this volume states the law no day had been appointed for the coming into force of this substitution. As to orders for attendance at an

attendance centre see the Powers of Criminal Courts (Sentencing) Act 2000 s 60(1); and PARA 267 et seq. As to youth default orders see the Criminal Justice and Immigration Act 2008 s 39.

33 Magistrates' Courts Act 1980 s 81(4).

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(iii) Reparation Orders

384. Reparation orders.

Where a child or young person (that is to say, any person aged under 18)¹ is convicted of an offence other than one for which the sentence is fixed by law, the court by or before which he is convicted may make an order (a 'reparation order'²) requiring him to make reparation³ specified in the order to a person or persons so specified⁴ or to the community at large⁵. Any person so specified must be a person identified by the court as a victim of the offence or a person otherwise affected by it⁶. The court must not make a reparation order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be named in the order⁷ and the notice has not been withdrawn⁸. The court must also not make a reparation order in respect of the offender if it proposes to pass on him a custodial sentence⁹ or to make in respect of him an appropriate community order¹⁰.

A reparation order must not require the offender to work for more than 24 hours in aggregate¹¹ or to make reparation to any person without the consent of that person¹². Subject to this, requirements specified in a reparation order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it¹³. Requirements so specified must, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs or (until a day to be appointed) with the requirements of any youth community order to which he may be subject¹⁴, and any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment¹⁵. Any reparation required by a reparation order must be made under the supervision of the responsible officer¹⁶, and must be made within a period of three months from the date of the making of the order¹⁷. The court must give reasons if it does not make a reparation order in a case where it has power to do so¹⁸.

Before making a reparation order, a court must obtain and consider a written report by an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team, indicating the type of work that is suitable for the offender¹⁹ and the attitude of the victim or victims to the requirements proposed to be included in the order²⁰.

Provision is made in connection with a breach of a reparation order²¹ and in connection with the revocation and amendment of such an order²².

1 As to the meanings of 'child' and 'young person' see PARA 5 note 3.

2 Powers of Criminal Courts (Sentencing) Act 2000 s 73(2). A reparation order must name the local justice area in which it appears to the court making the order, or to the court varying any provision included in it, that the offender resides or will reside: s 74(4) (amended by SI 2005/886).

3 'Make reparation', in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation and the requirements that may be specified in a reparation order are subject to the Powers of Criminal Courts (Sentencing) Act 2000 s 74(1)-(3) (see the text and notes 11-15): s 73(3).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 73(1)(a).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 73(1)(b).

- 6 Powers of Criminal Courts (Sentencing) Act 2000 s 73(1).
 - 7 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 74(4) (see note 2).
 - 8 Powers of Criminal Courts (Sentencing) Act 2000 s 73(6).
 - 9 Powers of Criminal Courts (Sentencing) Act 2000 s 73(4)(a).
 - 10 Powers of Criminal Courts (Sentencing) Act 2000 s 73(4)(b) (substituted by the Criminal Justice and Immigration Act 2008 Sch 4 paras 51, 53). An appropriate community order for these purposes is a youth rehabilitation order (see PARA 202 et seq) or a referral order (see PARA 344 et seq): s 73(4)(b) (as so substituted). The court may not make a reparation order in respect of the offender at a time when a youth rehabilitation order is in force in respect of him unless when it makes the reparation order it revokes the youth rehabilitation order (s 73(4A) (s 73(4A), (4B) added by the Criminal Justice and Immigration Act 2008 Sch 4 paras 51, 53)), and where a youth rehabilitation order is so revoked, the Criminal Justice and Immigration Act 2008 Sch 2 para 24 (breach, revocation or amendment of youth rehabilitation order: see PARA 221) applies to the revocation (Powers of Criminal Courts (Sentencing) Act 2000 s 73(4B) (as so added))
 - 11 Powers of Criminal Courts (Sentencing) Act 2000 s 74(1)(a).
 - 12 Powers of Criminal Courts (Sentencing) Act 2000 s 74(1)(b).
 - 13 Powers of Criminal Courts (Sentencing) Act 2000 s 74(2). As to an 'associated offence' see PARA 19 note 9.
 - 14 Powers of Criminal Courts (Sentencing) Act 2000 s 74(3)(a) (amended by the Criminal Justice Act 2003 Sch 32 paras 90, 106(1), (2), 107; and prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 4 paras 51, 54). The amendment made by the Criminal Justice and Immigration Act 2008 has been brought into force in so far as it repeals reference to community orders: see the Criminal Justice and Immigration Act 2008 (Commencement No 13 and Transitory Provision) Order 2009, SI 2009/3074.
 - 15 Powers of Criminal Courts (Sentencing) Act 2000 s 74(3)(b).
 - 16 Powers of Criminal Courts (Sentencing) Act 2000 s 74(8)(a). 'Responsible officer', in relation to an offender subject to a reparation order, means one of:
 - 580 (1) an officer of a local probation board or, as the case may be, an officer of a provider of probation services (s 74(5)(a) (ss 73(5), 74(5)(a), (6) amended by the Criminal Justice and Courts Services Act 2000 Sch 7 para 4(1)(a), (2); Powers of Criminal Courts (Sentencing) Act 2000 ss 73(5), 74(5)(a) amended, s 74(6A) added by SI 2008/912));
 - 581 (2) a social worker of a local authority (Powers of Criminal Courts (Sentencing) Act 2000 s 74(5)(b) (ss 73(5), 74(5)(b), (7) amended by the Children Act 2004 Sch 5 Pt 4)); or
 - 582 (3) a member of a youth offending team (Powers of Criminal Courts (Sentencing) Act 2000 s 74(5)(c)).
- As to local probation boards and providers of probation services see PARA 733 et seq. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq. Where a reparation order specifies an officer of the local probation board under s 74(5)(a) the officer so specified must be an officer appointed for or assigned to the local justice area named in the order (s 74(6) (as so amended; and amended by SI 2005/886)). Where a reparation order specifies an officer of a provider of probation services under the Powers of Criminal Courts (Sentencing) Act 2000 s 74(5), the officer specified must be an officer acting in the local justice area named in the order (s 74(6A) (as so added)). Where a reparation order specifies under s 74(5)(b) or s 74(5)(c) a social worker of a local authority or a member of a youth offending team, the social worker or member specified must be a social worker of, or a member of a youth offending team established by, the local authority within whose area it appears to the court that the child or young person resides or will reside: s 74(7) (as so amended).
- 17 Powers of Criminal Courts (Sentencing) Act 2000 s 74(8)(b).
 - 18 Powers of Criminal Courts (Sentencing) Act 2000 s 73(8).
 - 19 Powers of Criminal Courts (Sentencing) Act 2000 s 73(5)(a) (as amended: see note 16).
 - 20 Powers of Criminal Courts (Sentencing) Act 2000 s 73(5)(b).
 - 21 See the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 paras 1-4, 6, 7; and PARAS 385, 387.

22 See the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 paras 5-7; and PARAS 386-387.

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385. Breach of requirement of reparation order.

If while a reparation order¹ is in force in respect of an offender it is proved to the satisfaction of the court², on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order³, the court:

- 1287 (1) whether or not it also makes an order⁴ revoking or amending the reparation order, may order the offender to pay a fine⁵;
- 1288 (2) if the reparation order was made by a magistrates' court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order⁶; or
- 1289 (3) if the reparation order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court⁷.

In dealing with an offender under these provisions a court must take into account the extent to which the offender has complied with the requirements of the reparation order⁸.

These provisions have effect subject to the provision⁹ relating to the presence of the offender in court when an application¹⁰ is made by the appropriate officer¹¹.

1 As to the meaning of 'reparation order' see PARA 384.

2 I.e., a youth court acting in the local justice area in which the offender reside or, if it is not known where the offender resides, a youth court acting in the local justice area for the time being named in the order in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 s 74(4) (see PARA 384) (Sch 8 para 2(1) (Sch 8 para 2 amended, Sch 8 para 6A added, by the Criminal Justice and Immigration Act 2008 s 6(3), Sch 4 paras 51, 62, 106, 108, Sch 28 Pt 1)). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

It is provided that a youth court may adjourn any hearing relating to an offender in any proceedings under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8, and that where it does so the court may direct that the offender be released forthwith or remand the offender: Sch 8 para 6A(1), (2) (as so added). Where the court so remands the offender it must fix the time and place at which the hearing is to be resumed and that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand, and where the court so adjourns the hearing but does not remand the offender it may fix the time and place at which the hearing is to be resumed but, if it does not do so, it must not resume the hearing unless it is satisfied that the offender, the responsible officer and (if the offender is aged under 14) either a parent or guardian of the offender or, if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, that authority, have had adequate notice of the time and place for the resumed hearing: Criminal Justice Act 2003 Sch 8 para 6A(3)-(6) (as so added). These powers may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980: Criminal Justice Act 2003 Sch 8 para 6A(8) (as so added). These provisions apply to any hearing in any proceedings under Sch 8 in place of the Magistrates' Courts Act 1980 s 10 (adjournment of trial: see **MAGISTRATES** vol 29(2) (Reissue) PARAS 707, 711) where s 10 would otherwise apply, but do not affect the application of s 10 to hearings of any other description: Criminal Justice Act 2003 Sch 8 para 6A(9) (as so added).

For these purposes 'local authority' has the same meaning as it has in the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8) by virtue of s 7 (see PARA 202); 'parental responsibility' has the same meaning as it has in the Children Act 1989 by virtue of s 3 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134); and 'social services functions' has the same meaning as it has in the Local Authority Social Services Act 1970 by

virtue of s 1A (see **SOCIAL SECURITY AND PENSIONS**): Criminal Justice Act 2003 Sch 8 para 6A(7) (as so added). As to the meaning of 'responsible officer' see PARA 384 note 16.

3 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(1) (as amended: see note 2).

4 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1) (see PARA 248).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(a)(i). The amount of the fine must not exceed £1,000: Sch 8 para 2(2)(a)(i). A fine imposed under Sch 8 para 2 is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction: Sch 8 para 2(6).

The offender may appeal to the Crown Court against any order under Sch 8 para 2(2) except an order made or which could have been made in his absence by virtue of Sch 8 para 6(9) (see PARA 249): Sch 8 para 7(a).

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(b) (as amended: see note 2). See note 5. Unless the order in question was made on appeal, the proviso to the court's powers to deal with the offender under this provision is that it may deal with the offender in any way in which he could have been dealt with by the court which made the order if the order had not been made: Sch 8 para 2(2)(b), (8) (as so amended).

Where a reparation order has been made on appeal it is deemed:

583 (1) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court (Sch 8 para 2(8)(a) (as so amended)); and

584 (2) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court (Sch 8 para 2(8)(b) (as so amended)).

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(2)(c) (as amended: see note 2). See note 5. As to bail generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1165-1201. Where a court deals with an offender under Sch 8 para 2(2)(c) it must send to the Crown Court a certificate signed by a justice of the peace giving particulars of the offender's failure to comply with the requirement in question (Sch 8 para 2(3)(a)) and such other particulars of the case as may be desirable (Sch 8 para 2(3)(b)). A certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court: Sch 8 para 2(3). Where by virtue of Sch 8 para 2(2)(c) the offender is brought or appears before the Crown Court (Sch 8 para 2(4)(a)) and it is proved to the satisfaction of the court that he has failed to comply with the requirement in question (Sch 8 para 2(4)(b)), that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence (Sch 8 para 2(4)). Unless the order in question was made on appeal, the proviso to the court's powers to deal with the offender under Sch 8 para 2(4) is that the court may deal with the offender in any way in which it could have dealt with him if it had not made the order: Sch 8 para 2(8) (as so amended). Where the Crown Court deals with an offender under Sch 8 para 2(4), it must revoke the action plan order or reparation order if it is still in force: Sch 8 para 2(5) (as so amended).

8 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(7) (as amended: see note 2).

9 le the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6 (see PARA 387).

10 le an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(1) (see the text and notes 1-3) or Sch 8 para 5(1) (see PARA 386).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(9).

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386. Revocation and amendment of reparation orders.

If while a reparation order¹ is in force in respect of an offender it appears to the court², on the application of the responsible officer³ or the offender, that it is appropriate to make an order revoking or amending the order, the court may:

- 1290 (1) make an order revoking the order⁴; or
- 1291 (2) make an order amending it by cancelling any provision included in it⁵, or by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power⁶.

1 As to the meaning of 'reparation order' see PARA 384.

2 Ie the 'relevant court' (ie a youth court acting in the local justice area for the time being named in the order in pursuance of the Powers of Criminal Courts (Sentencing) Act 2000 s 74(4) (see PARA 384) (Sch 8 para 5(4)(a) (Sch 8 paras 5(1), (3), 7(b) amended, Sch 8 para 5(4) added, by the Criminal Justice and Immigration Act 2008 s 6(3), Sch 4 paras 51, 52, 62, 106, 108, Sch 28 Pt 1)) or, in the case of an application made both under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5 (see the text and notes 3-6) and under Sch 8 para 2(1) (see PARA 385), the court mentioned in Sch 8 para 2(1) (Sch 8 para 5(4)(b) (as so added))). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq.

3 As to the meaning of 'responsible officer' see PARA 384 note 16.

4 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1)(a) (as amended: see note 2). Schedule 8 para 5(1) has effect subject to Sch 8 para 6 (see PARA 387): Sch 8 para 5(2). Where an application under Sch 8 para 5(1) for the revocation of a reparation order is dismissed, no further application for its revocation may be made thereunder by any person except with the consent of the appropriate court: Sch 8 para 5(3) (as so amended).

The offender may appeal to the Crown Court against:

- 585 (1) any order under Sch 8 para 5(1) except an order made or which could have been made in his absence by virtue of Sch 8 para 6(9) (see PARA 249) (Sch 8 para 7(a)); and
- 586 (2) the dismissal of an application under Sch 8 para 5(1) to revoke an action plan order (Sch 8 para 7(b) (as so amended)).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1)(b)(i) (as amended: see note 2). See note 4.

6 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1)(b)(ii) (as amended: see note 2). See note 4.

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387. Presence of offender in court.

Where the responsible officer¹ makes an application² to a court that the offender has failed to comply with any requirement included in a reparation order³, or makes an application⁴ that it is appropriate for the court to make an order revoking or amending the order, he may bring the offender before the court⁵. Without prejudice to any other power to issue a summons or warrant⁶, the court to which such an application is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it⁷. Where the offender is arrested in pursuance of such a warrant⁸ and cannot be brought immediately before the court⁹, the person in whose custody he is may make arrangements for his detention in a place of safety¹⁰ for a period of not more than 72 hours from the time of the arrest (and it is lawful for him to be detained in pursuance of the arrangements)¹¹, and must within that period bring him before a youth court¹².

Where an application is made to a court that it is appropriate for the court to make an order revoking or amending a revocation order¹³, the court may remand (or further remand) the offender to local authority accommodation if a warrant has been issued¹⁴ for the purpose of securing the attendance of the offender before the court¹⁵, or the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether, and, if so, how, to exercise its powers to revoke or amend the action plan order¹⁶.

A court remanding an offender to local authority accommodation¹⁷ must designate, as the authority which is to receive him, the local authority for the area in which the offender resides or, where it appears to the court that he does not reside in the area of a local authority, the local authority specified by the court¹⁸, and in whose area the offence or an offence associated with it was committed¹⁹.

1 As to the meaning of 'responsible officer' see PARA 384 note 16.

2 Ie an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 2(1) (see PARA 385) or Sch 8 para 5(1) (see PARA 386).

3 As to reparation orders see PARA 384.

4 Ie an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1) (see PARA 386).

5 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(1) (Sch 8 para 6(1), (4), (5), (7), (9) amended by the Criminal Justice and Immigration Act 2008 s 6(2), (3), Sch 4 paras 106, 108(1), (5), Sch 28 Pt 1). A court must not in general make an order under Sch 8 para 2(1) (see PARA 385) or Sch 8 para 5(1) (see PARA 386) unless the offender is present before the court (Sch 8 para 6(1) (as so amended)), although a court may make an order under Sch 8 para 5(1) in the absence of the offender if the effect of the order is confined to one or more of the following, that is to say:

587 (1) revoking the reparation order (Sch 8 para 6(9)(a) (as so amended));

588 (2) cancelling a requirement included in the order (Sch 8 para 6(9)(b) (as so amended));

589 (3) altering in the order the name of any area (Sch 8 para 6(9)(c) (as so amended)); or

590 (4) changing the responsible officer (Sch 8 para 6(9)(d)).

6 le apart from the power under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2) (see the text and note 7). As to the issue of summonses and warrants see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 912 et seq.

7 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2). The court must not begin to hear the complaint in the absence of the defendant or issue a warrant under the Magistrates' Courts Act 1980 s 55 unless either it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the summons cannot be served or was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint: see s 55(3); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(3); and **MAGISTRATES** vol 29(2) (Reissue) PARAS 693, 701. Where the defendant fails to appear at an adjourned hearing, the court must not issue a warrant under the Magistrates' Courts Act 1980 s 55 unless it is satisfied that he has had adequate notice of the time and place of the adjourned hearing: see s 55(4); the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(3); and **MAGISTRATES** vol 29(2) (Reissue) PARA 693.

8 le a warrant issued by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2) (see the text and notes 6-7).

9 le the court before which the warrant directs the offender to be brought (the 'relevant court'): Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4) (as amended: see note 6).

10 As to the meaning of 'place of safety' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 608 (definition applied by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4) (as amended: see note 6)).

11 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4)(a) (s 6(4) as amended: see note 6).

12 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(4)(b) (s 6(4) as amended: see note 6). As to youth courts see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1263 et seq. Where an offender is so brought before a youth court other than the appropriate or relevant court, as the case may be (see note 9), the youth court may direct that he be released forthwith or remand him to local authority accommodation: Sch 8 para 6(5) (as so amended).

Until a day to be appointed where the offender is aged 18 or over at the time when he is brought before a youth court other than the relevant court under Sch 8 para 6(4), or is aged 18 or over at a time when (apart from these provisions) the relevant court could exercise its powers under Sch 8 para 6(6) (see the text and notes 13-16) in respect of him, he must not be remanded to local authority accommodation but may instead be remanded either to a remand centre (if the court has been notified that such a centre is available for the reception of persons under this provision) or to a prison (if it has not been so notified): Sch 8 para 6(7) (as so prospectively amended; prospectively further amended by the Criminal Justice and Courts Services Act 2000 Sch 7 paras 160, 202(1), (3), Sch 8). As from a day to be appointed it is instead provided that such an offender may in such circumstances only be remanded to a prison: see the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(7) (as so prospectively amended). At the date at which this volume states the law no such day had been appointed.

For these purposes 'local authority accommodation' means accommodation provided by or on behalf of a local authority; and 'accommodation provided by or on behalf of a local authority' has the same meaning as it has for the purposes of the Children Act 1989 by virtue of s 105 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 863): Powers of Criminal Courts (Sentencing) Act 2000 s 163.

13 le an application under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 5(1) (see PARA 386).

14 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(2) (see the text and notes 6-7).

15 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(6)(a).

16 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(6)(b).

17 le under the Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6.

18 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(8)(a).

19 Powers of Criminal Courts (Sentencing) Act 2000 Sch 8 para 6(8)(b).

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(iv) Restitution Orders

388. Restitution orders.

Where goods¹ have been stolen², and either a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence³) or a person is convicted of any other offence but such an offence is taken into consideration in determining his sentence⁴, the court by or before which the offender is convicted may on the conviction (whether or not the passing of sentence is in other respects deferred) exercise any of the following powers⁵:

- 1292 (1) the court may order anyone having possession or control of the stolen goods to restore them to any person entitled to recover them from him⁶; or
- 1293 (2) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the first-mentioned goods (as being the proceeds of any disposal or realisation of the whole or part of them or of goods so representing them) the court may order those other goods to be delivered or transferred to the applicant⁷; or
- 1294 (3) the court may order⁸ that a sum not exceeding the value of the stolen goods be paid, out of any money of the person convicted which was taken out of his possession on his apprehension⁹, to any person who, if those goods were in the possession of the person convicted, would be entitled to recover them from him¹⁰.

Where the court has power on a person's conviction to make an order against him both under head (2) and under head (3) above with reference to the stealing of the same goods, the court may make orders under both heads provided that the person in whose favour the orders are made does not thereby recover more than the value of those goods¹¹.

Where the court on a person's conviction makes an order under head (1) above for the restoration of any goods, and it appears to the court that the person convicted has sold the goods to a person acting in good faith¹², or has borrowed money on the security of them from a person so acting¹³, the court may order that there be paid to the purchaser or lender, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the purchaser or, as the case may be, the amount owed to the lender in respect of the loan¹⁴.

The court may not exercise these powers, however, unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents¹⁵, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers¹⁶.

Unless the court otherwise directs, a restitution order must be suspended until there is no further possibility of an appeal on which the order could be varied or set aside¹⁷.

These powers are exercisable not only where a person is convicted of an offence with reference to the theft of the goods in question but also where, on the conviction of a person of any other offence, the court takes an offence with reference to the theft of those goods into consideration in determining sentence; and where a restitution order is so made against any person in respect of an offence taken into consideration in determining his sentence:

- 1295 (a) the order ceases to have effect if he successfully appeals against his conviction of the offence or, if more than one, all the offences, of which he was convicted in the proceedings in which the order was made¹⁸; and
- 1296 (b) he may appeal against the order as if it were part of the sentence imposed in respect of the offence or, if more than one, any of the offences, of which he was so convicted¹⁹.

1 For the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 ss 148, 149 (see the text and notes 2-16), 'goods', except in so far as the context otherwise requires, includes money and every other description of property (within the meaning of the Theft Act 1968: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 285) except land, and includes things severed from the land by stealing: Powers of Criminal Courts (Sentencing) Act 2000 s 148(10).

2 For these purposes, references to stealing are to be construed in accordance with the Theft Act 1968 s 1(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282), read with the provisions of that Act relating to the construction of s 1(1): Powers of Criminal Courts (Sentencing) Act 2000 s 148(8). The provisions of the Theft Act 1968 s 24(1), (4) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 303) also apply as they apply in relation to the provisions of the Theft Act 1968 relating to goods which have been stolen: Powers of Criminal Courts (Sentencing) Act 2000 s 148(9).

3 Including a conviction for handling stolen goods (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 302) and (provided the court is satisfied on the evidence admissible under the Powers of Criminal Courts (Sentencing) Act 2000 s 148(5) (see the text and notes 15-16) that a theft of goods has been committed) burglary (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294) and aggravated burglary (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 295).

4 Powers of Criminal Courts (Sentencing) Act 2000 s 148(1)(a), (b).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 148(2). An order may be made under s 148 in respect of money owed by the Crown: s 148(11). Any order under s 148 is to be treated as an order for restitution of property within the meaning of the Criminal Appeal Act 1968 s 30 (effect of orders on appeals: see PARA 389): Powers of Criminal Courts (Sentencing) Act 2000 s 148(7). Where a magistrates' court commits the offender to the Crown Court for sentence it may not make a restitution order, because the power to do so becomes vested in the Crown Court: *R v Blackpool Justices, ex p Charleson and Gregory* [1972] 3 All ER 854, 137 JP 25, DC.

6 Powers of Criminal Courts (Sentencing) Act 2000 s 148(2)(a). An order under s 148 should not normally be made where there are serious competing claims involving third parties as a criminal court is not the correct forum for deciding such issues: see *Stamp v United Dominions Trust (Commercial) Ltd* [1967] 1 QB 418, [1967] 1 All ER 251, DC; *R v Ferguson* [1970] 2 All ER 820, [1970] 1 WLR 1246, CA; *R v Calcutt, R v Varty* (1985) 7 Cr App Rep (S) 385, [1986] Crim LR 266, CA. An order not expressly directed to any named person may be effective: see *Barclays Bank Ltd v Milne* [1963] 3 All ER 663, [1963] 1 WLR 1241. An order may be enforced in the same manner as a judgment: *Barclays Bank Ltd v Milne*.

7 Powers of Criminal Courts (Sentencing) Act 2000 s 148(2)(b). Where no application is made under s 148(2)(b), the court has no power to make an order under that provision: *R v Thiebauld* [1983] RTR 316(1982) 76 Cr App Rep 201, CA.

8 The power conferred by the Powers of Criminal Courts (Sentencing) Act 2000 s 148(2)(c) (see head (3) in the text) is exercisable without any application being made in that behalf or on the application of any person appearing to the court to be interested in the property concerned: s 149(1), (2).

9 See *R v Ferguson* [1970] 2 All ER 820, [1970] 1 WLR 1246, CA (money taken from offender's safe deposit box two weeks after arrest was 'taken out of his possession on his apprehension'). See also *R v Parker* [1970] 2 All ER 458, [1970] 1 WLR 1003, CA (where all the property in respect of which the offender has been convicted has been recovered, it is an incorrect exercise of the discretion to make a restitution order in respect of property which was not the subject of a charge against him). If the issue whether such money belonged to the offender is raised, except in the clearest case, it should be decided in the civil courts: *R v Ferguson*.

10 Powers of Criminal Courts (Sentencing) Act 2000 s 148(2)(c). See also *R v Parker* [1970] 2 All ER 458, [1970] 1 WLR 1003, CA (goods in respect of which offender was convicted were recovered; order for payment in respect of goods stolen at same time invalid).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 148(3).

12 Powers of Criminal Courts (Sentencing) Act 2000 s 148(4)(a).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 148(4)(b).

14 Powers of Criminal Courts (Sentencing) Act 2000 s 148(4). The power conferred by s 148(4) is exercisable without any application being made in that behalf or on the application of any person appearing to the court to be interested in the property concerned: s 149(1), (2).

15 For these purposes, 'available documents' means any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial (Powers of Criminal Courts (Sentencing) Act 2000 s 148(6)(a)); partly until a day to be appointed, such written statements, depositions and other documents as were tendered by or on behalf of the prosecution at any committal proceedings (s 148(6)(b) (prospectively substituted by the Criminal Justice Act 2003 Sch 3, para 74(1), (5))); and partly as from that day, such documents as were served on the offender in pursuance of regulations made under the Crime and Disorder Act 1998 Sch 3 para 1 (Powers of Criminal Courts (Sentencing) Act 2000 s 148(6)(b) (as so prospectively substituted)). At the date at which this volume states the law this substitution had come into force only in respect of cases sent for trial under the Crime and Disorder Act 1998 s 51 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1132) or s 51A(3)(d) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1133) (Criminal Justice Act 2003 (Commencement No 9) Order 2005, SI 2005/1267), and no day had been appointed bringing it into force for remaining purposes.

16 Powers of Criminal Courts (Sentencing) Act 2000 s 148(5). See *R v Church* (1970) 55 Cr App Rep 65, CA (a trial comes to a conclusion when sentence is passed and evidence given after sentence is not evidence given at the trial).

17 See PARA 389. Any order made by a magistrates' court must be suspended: (1) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court (Powers of Criminal Courts (Sentencing) Act 2000 s 149(4)(a)); (2) where notice of appeal is given within the period so prescribed, until the determination of the appeal (s 149(4)(b)). However, this provision does not apply where the order is made under s 148(2)(a) or (b) (see the text and notes 6-7) and the court so directs, being of the opinion that the title to the goods to be restored or, as the case may be, delivered or transferred under the order is not in dispute: s 149(4).

18 Powers of Criminal Courts (Sentencing) Act 2000 s 149(3)(a).

19 Powers of Criminal Courts (Sentencing) Act 2000 s 149(3)(b).

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389. Suspension of orders for restitution of property.

Unless the Court of Appeal directs to the contrary in any case in which, in its opinion, the title to property is not in dispute, the operation of an order for the restitution of property¹ to a person made by the Crown Court is suspended until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal² on which the order could be varied or set aside; and provision may be made³ for the custody of any property in the meantime⁴. The Court of Appeal may by order annul or vary any order made by the court of trial⁵ for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, does not take effect and, if varied, takes effect as so varied⁶. Where the Supreme Court restores a conviction⁷, it may make any order for the restitution of property which the court of trial could have made⁸.

1 Any order under the Powers of Criminal Courts (Sentencing) Act 2000 s 148 (orders for restitution: see PARA 388) is to be treated as an order for the restitution of property within the meaning of the Criminal Appeal Act 1968 s 30 (see the text and notes 2-8); Powers of Criminal Courts (Sentencing) Act 2000 s 148(7). See also the Wildlife and Countryside Act 1981 s 31; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 693.

2 As to the meaning of 'appeal' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1837.

3 Ie by rules of court.

4 Criminal Appeal Act 1968 s 30(1) (s 30 substituted by the Criminal Justice Act 1988 Sch 15 paras 20, 28).

5 As to the meaning of 'court of trial' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1837.

6 Criminal Appeal Act 1968 s 30(2) (as substituted: see note 4).

7 As to the Supreme Court see PARA 53 note 1; as to appeals to the Supreme Court see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966 et seq.

8 Criminal Appeal Act 1968 s 30(3) (as substituted (see note 4); amended by the Constitutional Reform Act 2005 Sch 9 para 16(1), (2)).

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(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME

(i) Confiscation Orders under the Proceeds of Crime Act 2002

A. MAKING OF CONFISCATION ORDERS

390. Scope of legislation.

The power to make a confiscation order under the Proceeds of Crime Act 2002¹ applies only in respect of an offence committed on or after 24 March 2003². The making of confiscation orders in relation to offences committed before that date continues to be governed by repealed provisions of the Criminal Justice Act 1988³ or, where applicable, the Drug Trafficking Act 1994⁴, which are specifically saved for the purpose⁵.

1 See the Proceeds of Crime Act 2002 Pt 2 (ss 6-91); and PARA 391 et seq.

2 I.e. the date on which the Proceeds of Crime Act 2002 Pt 2 was brought into force by the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 2, Schedule. Thus the Proceeds of Crime Act 2002 applies only if all the offences on an indictment were committed on or after 24 March 2003 (the corollary of this being that the Proceeds of Crime Act 2002 does not apply, but the Criminal Justice Act 1988 (see the text and note 3) does, if any of the offences on the indictment were committed before 24 March 2003), and an offence committed over a period of time commencing before 24 March 2003 is treated as having been committed before that date: see the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, arts 3, 7 (art 7 substituted by SI 2003/531); and see also (in connection with continuing offences or a sequence of offences commenced before 24 March 2003) *R v Simpson* [2003] EWCA Crim 1499, [2004] QB 118, [2003] 2 Cr App Rep 545; *R v Aslam* [2004] EWCA Crim 2801, [2005] 1 Cr App Rep (S) 660, [2005] Crim LR 145; *R v Stapleton* [2008] EWCA Crim 1308, [2009] 1 Cr App Rep (S) 209, [2008] Crim LR 813; *R v Moulden* [2008] EWCA Crim 2561, [2009] 2 All ER 912, [2009] 2 Cr App Rep (S) 84 (if offences are charged in separate indictments each is a separate proceedings for the purposes of confiscation).

3 I.e. the Criminal Justice Act 1988 Pt VI (ss 71-103) (repealed by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2): see PARA 459 et seq.

4 I.e. the Drug Trafficking Act 1994 Pt 1 (ss 1-41) (repealed by the Proceeds of Crime Act 2002 Sch 11 para 25, Sch 12, and replaced by Pt 2): see PARA 474.

5 See the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a), (e).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/A. MAKING OF CONFISCATION ORDERS/391. Making a confiscation order.

391. Making a confiscation order.

Where the defendant¹ is either: (1) convicted of an offence or offences in proceedings before the Crown Court²; (2) committed³ to the Crown Court for sentence in respect of an offence or offences⁴; or (3) committed⁵ to the Crown Court in respect of an offence or offences with a view to a confiscation order being considered⁶; and the prosecutor asks the court to proceed under these provisions⁷ or the court believes it is appropriate for it to do so⁸, the Crown Court must⁹ proceed as follows:

- 1297 (a) it must decide¹⁰ whether the defendant has a criminal lifestyle¹¹;
- 1298 (b) if it decides that he has a criminal lifestyle it must decide whether he has benefited¹² from his general criminal conduct¹³;
- 1299 (c) if it decides that he does not have a criminal lifestyle it must decide whether he has benefited from his particular criminal conduct¹⁴.

If the Crown Court decides under head (a) or head (c) above that the defendant has benefited from the conduct referred to it must decide¹⁵ the recoverable amount¹⁶, and must make an order (a 'confiscation order') requiring him to pay that amount¹⁷. However, the duty to do these two things does not apply if the Crown Court believes that the victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct; in such a case the court must treat this duty as a power¹⁸.

The Secretary of State may by order¹⁹ make such provision as he considers appropriate for or in connection with enabling confiscation orders²⁰ to be made by magistrates' courts in England and Wales²¹. However, such an order by the Secretary of State may not enable such a confiscation order to be made by any magistrates' court in respect of an amount exceeding £10,000²².

1 A defendant is a person against whom proceedings for an offence have been started (whether or not he has been convicted): Proceeds of Crime Act 2002 s 88(3).

Proceedings for an offence are 'started' when a justice of the peace issues a summons or warrant under the Magistrates' Courts Act 1980 s 1 (see **MAGISTRATES** vol 29(2) (Reissue) PARAS 522-523) (Proceeds of Crime Act 2002 s 85(1)(a)), when a public prosecutor issues a written charge and requisition in respect of the offence (s 85(1)(aa) (added by the Criminal Justice Act 2003 Sch 36 para 15)), when a person is charged with the offence after being taken into custody without a warrant (Proceeds of Crime Act 2002 s 85(1)(b)) or when a bill of indictment is preferred under the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2 in a case falling within s 2(2)(b) (preference by Court of Appeal or High Court judge: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1206) (Proceeds of Crime Act 2002 s 85(1)(c)). If more than one time is found under s 85(1) in relation to proceedings they are started at the earliest of them: s 85(2). As to the meanings of 'public prosecutor', 'requisition' and 'written charge' see the Criminal Justice Act 2003 s 29; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 912, 915 (definition applied by the Proceeds of Crime Act 2002 s 85(9) (added by the Criminal Justice Act 2003 Sch 36 para 15)).

2 See the Proceeds of Crime Act 2002 s 6(1), (2)(a). 'Proceedings' under s 6(2)(a) means proceedings under a single indictment: *R v Moulden* [2008] EWCA Crim 2561, [2009] 2 All ER 912, [2009] 1 Cr App Rep 362. The condition set out in the Proceeds of Crime Act 2002 s 6(2) is not satisfied if the defendant absconds (although s 27 (see PARA 413) may apply): s 6(8). Section 6 does not have effect where the offence, or any of the offences, mentioned in s 6(2) (see the text and notes 3-6) was committed before 24 March 2003: see the Proceeds of

Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 3(1); and PARA 390.

3 Until a day to be appointed the text refers to committal under the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105), s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105) or s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105). As from the appointed day, the text refers to committal under s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1123), s 3A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1124), s 3B (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1125), s 3C (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1126), s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1127), s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1128) or s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129): Proceeds of Crime Act 2002 s 6(2)(b) (prospectively amended by the Criminal Justice Act 2003 s 41, Sch 3 para 75(1), (2)). At the date at which this volume states the law no such day had been appointed.

4 Proceeds of Crime Act 2002 s 6(2)(b) (prospectively amended: see note 3). See note 2.

5 le under the Proceeds of Crime Act 2002 s 70 (see PARA 453).

6 Proceeds of Crime Act 2002 s 6(2)(c). See note 2.

7 Proceeds of Crime Act 2002 s 6(3)(a) (amended by the Criminal Justice Act 2003 Sch 3 para 75).

8 Proceeds of Crime Act 2002 s 6(3)(b).

9 In connection with judicial attempts at acquiring a discretion in this matter see *R v Jones* [2006] EWCA Crim 2061, [2007] 1 WLR 7, [2007] 1 Cr App Rep (S) 414; *R v Hockey* [2007] EWCA Crim 1577, [2008] 1 Cr App Rep (S) 279, [2008] Crim LR 59. See also *R v Mahmood* [2005] EWCA Crim 2168, [2006] 1 Cr App Rep (S) 570, [2006] Crim LR 75; *R v Shabir* [2008] EWCA Crim 1809, [2009] 1 Cr App Rep (S) 497, [2008] All ER (D) 414 (Jul); *R v Lowe* [2009] EWCA Crim 194, [2009] 2 Cr App Rep (S) 544, [2009] Crim LR 452; *R v Nelson (Prosecution Appeal under section 31 of the Proceeds of Crime Act 2002)* [2009] EWCA Crim 1573, [2009] Crim LR 811, [2009] All ER (D) 283 (Jul); *R v Silvester* [2009] EWCA Crim 2182, [2009] All ER (D) 103 (Nov).

10 The court must decide any questions arising under the Proceeds of Crime Act 2002 s 6(4) (see the text and notes 11-14) on the balance of probabilities: s 6(7).

11 Proceeds of Crime Act 2002 s 6(4)(a). As to whether a defendant has a criminal lifestyle see PARA 392.

12 As to when the defendant benefits from criminal conduct see PARA 394.

13 Proceeds of Crime Act 2002 s 6(4)(b). 'Criminal conduct' is conduct which: (1) constitutes an offence in England and Wales (s 76(1)(a)); or (2) would constitute such an offence if it occurred in England and Wales (s 76(1)(b)). 'General criminal conduct' of the defendant is all his criminal conduct, and it is immaterial: (a) whether conduct occurred before or after the passing of the Proceeds of Crime Act 2002 (s 76(2)(a)); and (b) whether property constituting a benefit from conduct was obtained before or after the passing of this Act (s 76(2)(b)). 'Property' is all property wherever situated and includes money, all forms of real or personal property, and things in action and other intangible or incorporeal property: s 84(1). Property is 'obtained' by a person if he obtains an interest in it (s 84(2)(b)) and is 'held' by a person if he holds an interest in it (s 84(2)(a)); and references to property 'held' by a person also include references to property vested in his trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985) or liquidator (Proceeds of Crime Act 2002 s 84(2)(d)). References to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested: s 84(2)(e). References to an 'interest' in relation to land are references to any legal estate or equitable interest or power (in relation to land in England and Wales or Northern Ireland) (s 84(2)(f)) or to any estate, interest, servitude or other heritable right in or over land, including a heritable security (in relation to land in Scotland) (s 84(2)(g)); and, in relation to property other than land, references to an 'interest' include references to a right (including a right to possession) (s 84(2)(h)). Property is 'transferred' by one person to another if the first one transfers or grants an interest in it to the second: s 84(2)(c). Debts and contingent interests under a will fall within the definition of 'property' for these purposes (see *R v Walbrook* (1994) 15 Cr App Rep (S) 783, [1994] Crim LR 613, CA) as do interests in unadministered estates and choses in action of a personal nature such as a right of action in damages (see *Re Maye* [2008] UKHL 9, [2008] 1 WLR 315, (2008) Times, 11 February).

14 Proceeds of Crime Act 2002 s 6(4)(c). 'Particular criminal conduct' of the defendant is all his criminal conduct (see note 13) which falls within the following: (1) conduct which constitutes the offence or offences concerned (s 76(3)(a)); (2) conduct which constitutes offences of which he was convicted in the same proceedings as those in which he was convicted of the offence or offences concerned (s 76(3)(b)); and (3) conduct which constitutes offences which the court will be taking into consideration in deciding his sentence for

the offence or offences concerned (s 76(3)(c)). Conduct which constitutes an offence which was committed before 24 March 2003 is not particular criminal conduct under s 76(3): Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, art 9.

In relation to proceedings under the Proceeds of Crime Act 2002 Pt 2, Criminal Procedure Rules may make provision corresponding to provision in Civil Procedure Rules: s 91(a) (amended by the Courts Act 2003 s 109(1), Sch 8 para 410). For procedural rules relating to confiscation proceedings under the Proceeds of Crime Act 2002 s 6 see CrimPR 57, 58.

15 The court must decide any questions arising under the Proceeds of Crime Act 2002 s 6(5) on the balance of probabilities: s 6(7). As to an appeal by the prosecutor in respect of a confiscation order or against a refusal to make a confiscation order see PARA 417.

16 Proceeds of Crime Act 2002 s 6(5)(a). As to the 'recoverable amount' see PARA 397.

17 Proceeds of Crime Act 2002 s 6(5)(b). In making a confiscation order a judge is entitled to take into account all evidence heard and to make his own relevant findings of fact, provided that he acts consistently with the verdict and its factual basis: *R v Sangha* [2008] EWCA Crim 2562, [2009] STC 570, [2008] All ER (D) 161 (Nov). Provision is also made by Order in Council for prohibitions to be imposed on dealing with property which is the subject of an external request (ie a request by an overseas authority to prohibit dealing with relevant property which is identified in the request) and for the realisation of property for the purpose of giving effect to an external order (ie an order which is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct and is for the recovery of specified property or a specified sum of money): see the Proceeds of Crime Act 2002 ss 444, 447(1), (2); and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181. See also CrimPR 57.15. As to the meaning of 'overseas authority' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 805 note 12. Before the enactment of the Proceeds of Crime Act 2002, provision in this regard was made by the Criminal Justice Act 1988 ss 96, 97 (amended by the Criminal Justice Act 1993 s 21(2), (3)(g); prospectively repealed by the Proceeds of Crime Act 2002 ss 456, 457, Sch 11 paras 1, 17(1), (2)(a), Sch 12); and the Criminal Justice Act 1988 (Designated Countries and Territories) (Amendment) Order 1991, SI 1991/2873 (amended by SI 1993/1790; SI 1993/3147; SI 1994/1639; SI 1996/278; SI 1996/2877; SI 1997/1316; SI 1997/2976; SI 1999/282; SI 2001/960; SI 2002/256; SI 2002/2844; SI 2004/1981); and by the Drug Trafficking Act 1994 ss 39, 40 (prospectively repealed by the Proceeds of Crime Act 2002 Sch 11 para 25(1), (2)(a), Sch 12); and the Drug Trafficking Act 1994 (Designated Countries and Territories) Order 1996, SI 1996/2880 (amended by SI 1997/1318; SI 1997/2980; SI 2001/956; SI 2002/257; SI 2002/2846).

18 Proceeds of Crime Act 2002 s 6(6). If s 6(6) applies, the recoverable amount is such amount as the court believes is just (s 7(3)(a)) but does not exceed the amount found under s 7(1) or (2) (as the case may be) (s 7(3)(b)).

19 Such an order may amend, repeal, revoke or otherwise modify any provision of the Proceeds of Crime Act 2002 Pt 2 or any other enactment relating to, or to things done under or for the purposes of Pt 2: Serious Organised Crime and Police Act 2005 s 97(3). At the date at which this volume states the law no such order had been made. As to the making of orders under the Serious Organised Crime and Police Act 2005 see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 821 note 2.

20 Ie orders under the Proceeds of Crime Act 2002 Pt 2.

21 Serious Organised Crime and Police Act 2005 s 97(1)(a).

22 Serious Organised Crime and Police Act 2005 s 97(2).

UPDATE

391 Making a confiscation order

NOTES 14, 17--CrimPR 57, 58 now Criminal Procedure Rules 2010, SI 2010/60, Pts 57, 58.

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392. Criminal lifestyle.

A defendant¹ has a criminal lifestyle if, and only if, the following condition is satisfied². The condition is that the offence (or any of the offences) concerned³ satisfies any of the following tests:

- 1300 (1) it is a lifestyle offence⁴;
- 1301 (2) it constitutes conduct forming part of a course of criminal activity⁵;
- 1302 (3) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence⁶.

Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited⁷; or (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited⁸.

1 As to the meaning of 'defendant' see PARA 391 note 1.

2 Proceeds of Crime Act 2002 s 75(1).

3 References to the offence (or offences) concerned are references to the offence (or offences) mentioned in the Proceeds of Crime Act 2002 s 6(2) (see PARA 391): ss 6(9), 88(1).

4 See the Proceeds of Crime Act 2002 s 75(2)(a). As to lifestyle offences see PARA 393.

5 Proceeds of Crime Act 2002 s 75(2)(b). An offence does not satisfy the test in s 75(2)(b) unless the defendant obtains relevant benefit of not less than £5,000: s 75(4). The Secretary of State may by order vary the amount for the time being specified in s 75(4): s 75(8). At the date at which this volume states the law no such order had been made. 'Relevant benefit' for the purposes of s 75(2)(b) is: (1) benefit from conduct which constitutes the offence (s 75(5)(a)); (2) benefit from any other conduct which forms part of the course of criminal activity and which constitutes an offence of which the defendant has been convicted (s 75(5)(b)); and (3) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the defendant for an offence mentioned in head (1) or head (2) (s 75(5)(c)). Where the court is applying the rule in the Proceeds of Crime Act 2002 s 75(5) on the calculation of relevant benefit for the purposes of determining whether or not the test in s 75(2)(b) is satisfied by virtue of conduct forming part of a course of criminal activity under s 75(3)(a), the court must not take into account benefit from conduct constituting an offence mentioned in s 75(5)(c) which was committed before 24 March 2003: Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 7(3) (substituted by SI 2003/531). Where the court is applying the rule in the Proceeds of Crime Act 2002 s 75(5) on the calculation of relevant benefit for the purposes of determining whether or not the test in s 75(2)(b) is satisfied by virtue of conduct forming part of a course of criminal activity under s 75(3)(b), the court may take into account benefit from conduct constituting an offence committed before 24 March 2003: Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 7(5) (as so substituted). As to the scope of the legislation governing confiscation orders see PARA 390.

6 Proceeds of Crime Act 2002 s 75(2)(c). An offence does not satisfy the test in s 75(2)(c) unless the defendant obtains relevant benefit of not less than £5,000: s 75(4). The Secretary of State may by order vary the amount for the time being specified in s 75(4): s 75(8). At the date at which this volume states the law no such order had been made. 'Relevant benefit' for the purposes of the Proceeds of Crime Act 2002 s 75(2)(c) is: (1) benefit from conduct which constitutes the offence (s 75(6)(a)); and (2) benefit from conduct which constitutes an offence which has been or will be taken into consideration by the court in sentencing the

defendant for the offence mentioned in head (1) (s 75(6)(b)). Where the court is applying the rule in the Proceeds of Crime Act 2002 s 75(6) on the calculation of relevant benefit for the purposes of determining whether or not the test in s 75(2)(c) is satisfied, the court must not take into account benefit from conduct constituting an offence mentioned in s 75(6)(b) which was committed before 24 March 2003: Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 7(6) (substituted by SI 2003/531).

7 Proceeds of Crime Act 2002 s 75(3)(a). Where the court is determining whether the defendant has a criminal lifestyle conduct does not form part of a course of criminal activity under s 75(3)(a) where any of the three or more offences mentioned in s 75(3)(a) was committed before 24 March 2003: Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 7(1), (2) (art 7 substituted by SI 2003/531).

8 Proceeds of Crime Act 2002 s 75(3)(b). Conduct forms part of a course of criminal activity under s 75(3)(b), notwithstanding that any of the offences of which the defendant was convicted on at least two separate occasions in the period mentioned in s 75(3)(b) was committed before 24 March 2003: Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 7(4) (art 7 substituted by SI 2003/531)).

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393. Lifestyle offences.

The following are 'lifestyle offences' under the Proceeds of Crime Act 2002:

- 1303 (1) a drug trafficking offence ie (a) the unlawful production or supply of controlled drugs¹, the possession of controlled drug with intent to supply², permitting certain activities relating to controlled drugs³ or assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law⁴; (b) an offence (if it is committed in connection with a prohibition or restriction on importation or exportation which has effect by virtue of the Misuse of Drugs Act 1971)⁵ in relation to the improper importation of goods⁶, the exploration of prohibited or restricted goods⁷ or fraudulent evasion⁸; or (c) an offence in relation to the manufacture or supply of controlled substances⁹ or of using a ship for illicit traffic in controlled drugs¹⁰;
- 1304 (2) a money laundering offence in relation concealing etc criminal property¹¹ or assisting another to retain criminal property¹²;
- 1305 (3) an offence of directing the activities of a terrorist organisation¹³;
- 1306 (4) a people trafficking offence of (a) assisting unlawful immigration etc¹⁴; (b) trafficking for sexual exploitation¹⁵; or (c) exploitation¹⁶;
- 1307 (5) an arms trafficking offence (a) (if it is committed in connection with a firearm or ammunition) relating to the exportation of prohibited goods¹⁷ or fraudulent evasion¹⁸; (b) of dealing in firearms or ammunition by way of trade or business¹⁹;
- 1308 (6) a counterfeiting offence ie an offence of making counterfeit notes or coins²⁰, passing etc counterfeit notes or coins²¹, having counterfeit notes or coins²² or making or possessing materials or equipment for counterfeiting²³;
- 1309 (7) an offence relating to intellectual property ie an offence of (a) making or dealing in an article which infringes copyright²⁴; (b) making or possessing an article designed or adapted for making a copy of a copyright work²⁵; (c) making or dealing in an illicit recording²⁶; (d) making or dealing in unauthorised decoders²⁷; or (e) unauthorised use etc of trade mark²⁸;
- 1310 (8) offences relating to prostitution and child sex ie (a) keeping or letting premises for use as a brothel²⁹; (b) arranging or facilitating commission of a child sex offence³⁰; (c) causing or inciting child prostitution or pornography³¹; (d) controlling a child prostitute or a child involved in pornography³²; (e) arranging or facilitating child prostitution or pornography³³; (f) causing or inciting prostitution for gain³⁴; or (g) controlling prostitution for gain³⁵;
- 1311 (9) the offence of blackmail³⁶;
- 1312 (10) an offence³⁷ of acting as a gangmaster other than under the authority of a licence and of being in possession of false documents etc³⁸;
- 1313 (11) an offence relating to inchoate offences ie (a) attempting, conspiring or inciting the commission of a lifestyle offence³⁹; (b) an offence of doing an act capable of encouraging or assisting in the commission of such an offence⁴⁰; or (c) an offence of aiding, abetting, counselling or procuring the commission of such an offence⁴¹.

- 1 le an offence under the Misuse of Drugs Act 1971 s 4(2) or (3) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772).
- 2 le an offence under the Misuse of Drugs Act 1971 s 5(3) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772).
- 3 le an offence under the Misuse of Drugs Act 1971 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 777).
- 4 Proceeds of Crime Act 2002 Sch 2 para 1(1). An offence of assisting in or inducing the commission outside the United Kingdom of an offence punishable under a corresponding law is an offence under the Misuse of Drugs Act 1971 s 20 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 260).
- 5 le by virtue of the Misuse of Drugs Act 1971 s 3 (restriction of importation and exportation of controlled drugs: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 248).
- 6 le an offence under the Customs and Excise Management Act 1979 s 50(2) or (3) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 994).
- 7 le an offence under the Customs and Excise Management Act 1979 s 68(2) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029).
- 8 Proceeds of Crime Act 2002 Sch 2 para 1(2). An offence of fraudulent invasion mentioned in the text is one under the Customs and Excise Management Act 1979 s 170 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178).
- 9 le an offence under the Criminal Justice (International Co-operation) Act 1990 s 12 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 773).
- 10 Proceeds of Crime Act 2002 Sch 2 para 1(3). An offence of using a ship for illicit traffic in controlled drugs mentioned in the text is an offence under the Criminal Justice (International Co-operation) Act 1990 s 19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 780).
- 11 le an offence under the Proceeds of Crime Act 2002 s 327 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 791).
- 12 Proceeds of Crime Act 2002 Sch 2 para 2. An offence of assisting another to retain criminal property mentioned in the text is an offence under the Proceeds of Crime Act 2002 s 328 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 792). Money laundering offences do not constitute a special category of offence to which a separate approach to confiscation orders should apply: *R v Allpress* [2009] EWCA Crim 8, [2009] 2 Cr App Rep (S) 399, [2009] All ER (D) 126 (Jan).
- 13 Proceeds of Crime Act 2002 Sch 2 para 3. An offence of directing the activities of a terrorist organisation is an offence under the Terrorism Act 2000 s 56 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 441).
- 14 le an offence under the Immigration Act 1971 s 25, s 25A or s 25B (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 199).
- 15 le an offence under the Sexual Offences Act 2003 ss 57-59 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 228).
- 16 Proceeds of Crime Act 2002 Sch 2 para 4 (substituted by the Nationality, Immigration and Asylum Act 2002 Sch 7 para 31; and amended by the Sexual Offences Act 2003 Sch 6 para 46, the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 5(7)). An offence of exploitation mentioned in the text is an offence under the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 4 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**).
- 17 le an offence under the Customs and Excise Management Act 1979 s 68(2) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029).
- 18 le an offence under the Customs and Excise Management Act 1979 s 170 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178).
- 19 Proceeds of Crime Act 2002 Sch 2 para 5(1), (2). An offence of dealing in firearms or ammunition by way of trade or business referred to in the text is an offence under the Firearms Act 1968 s 3(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 636). As to the meaning of 'firearm' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 630 and as to the meaning of 'ammunition' see **CRIMINAL**

LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 634 (definitions applied by the Proceeds of Crime Act 2002 Sch 2 para 5(3)).

20 Ie an offence under the Forgery and Counterfeiting Act 1981 s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 544).

21 Ie an offence under the Forgery and Counterfeiting Act 1981 s 15 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 545).

22 Ie an offence under the Forgery and Counterfeiting Act 1981 s 16 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 546).

23 Proceeds of Crime Act 2002 Sch 2 para 6. An offence of making or possessing materials or equipment for counterfeiting is an offence under the Forgery and Counterfeiting Act 1981 s 17 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 547).

24 Ie an offence under the Copyright, Designs and Patents Act 1988 s 107(1) (see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 437).

25 Ie an offence under the Copyright, Designs and Patents Act 1988 s 107(2) (see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 437).

26 Ie an offence under the Copyright, Designs and Patents Act 1988 s 198(1) (see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 715).

27 Ie an offence under the Copyright, Designs and Patents Act 1988 s 297A (see **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 492).

28 Proceeds of Crime Act 2002 Sch 2 para 7. An offence of unauthorised use etc of trade mark mentioned in the text is an offence under the Trade Marks Act 1994 s 92(1), (2) or (3) (see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARAS 141-143).

29 Ie under the Sexual Offences Act 1956 s 33 or s 34 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 218, 220).

30 Ie under the Sexual Offences Act 2003 s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 178).

31 Ie under the Sexual Offences Act 2003 s 48 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216).

32 Ie under the Sexual Offences Act 2003 s 49 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216).

33 Ie under the Sexual Offences Act 2003 s 50 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216).

34 Ie under the Sexual Offences Act 2003 s 52 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217).

35 Proceeds of Crime Act 2002 Sch 2 para 8. An offence of controlling prostitution for gain mentioned in the text refers to an offence under the Sexual Offences Act 2003 s 53 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 217).

36 Proceeds of Crime Act 2002 Sch 2 para 9. The offence of blackmail mentioned in the text is an offence under the Theft Act 1968 s 21 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 308).

37 Ie an offence under the Gangmasters (Licensing) Act 2004 s 12(1) or (2) (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1253).

38 Proceeds of Crime Act 2002 Sch 2 para 9A (added by the Gangmasters (Licensing) Act 2004 s 14(4)).

39 Ie an offence under the Proceeds of Crime Act 2002 Sch 2.

40 Ie an offence under the Serious Crime Act 2007 s 44 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

41 Proceeds of Crime Act 2002 Sch 2 para 10 (amended by the Serious Crime Act 2007 Sch 6 para 62).

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394. Defendant's benefit.

A person benefits from conduct if he obtains property¹ as a result of, or in connection with, the conduct² and, if a person benefits from conduct, his benefit is the value of the property obtained³. If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage⁴.

If the court is proceeding in relation to a confiscation order⁵, then the following applies for the purpose of deciding whether the defendant has benefited from conduct⁶, and deciding his benefit from the conduct⁷. The court must take account of conduct occurring up to the time it makes its decision⁸ and take account of property obtained up to that time⁹.

Where:

- 1314 (1) the conduct concerned is general criminal conduct¹⁰;
- 1315 (2) a confiscation order¹¹ has at an earlier time been made against the defendant¹²; and
- 1316 (3) his benefit for the purposes of that order was benefit from his general criminal conduct¹³,

the defendant's benefit found at the time the last confiscation order mentioned in head (3) was made against him must be taken to be his benefit from his general criminal conduct at that time¹⁴. If the conduct concerned is general criminal conduct, the court must deduct the aggregate of the following amounts: (a) the amount ordered to be paid under each confiscation order previously made against the defendant¹⁵; (b) the amount ordered to be paid under each confiscation order previously made against him under certain provisions¹⁶.

1 As to the meaning of 'property' and as to when property is 'obtained' see PARA 391 note 13. References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained both in that connection and some other: Proceeds of Crime Act 2002 s 76(6).

2 Proceeds of Crime Act 2002 s 76(4). The benefit obtained may exceed the profit derived from the activity: *R v Shabir* [2008] EWCA Crim 1809, [2009] 1 Cr App Rep (S) 497, [2008] All ER (D) 414 (Jul). An offender 'obtains' property within the meaning of the Proceeds of Crime Act 2002 s 76(4) if he takes possession of it, even if only on a temporary basis: *R v Stanley* [2007] EWCA Crim 2857, [2008] 2 Cr App Rep (S) 107. To determine whether a defendant has benefited the prosecution must prove, to the civil standard, that expenditure has been incurred by the defendant, prima facie evidence is not sufficient: *A-G's Reference (No 2 of 2008)*; *R v Winters* [2008] EWCA Crim 2953, (2009) Times, 12 January, [2008] All ER (D) 112 (Dec).

3 Proceeds of Crime Act 2002 s 76(7). The benefit gained is the total value of the property or pecuniary advantage gained, not the particular defendant's net profit; and where two or more defendants obtain property jointly, each is regarded as obtaining the whole of it: see *R v May* [2008] UKHL 28, [2008] 1 AC 1028, [2008] 4 All ER 97, and *R v Green* [2008] UKHL 30, [2008] 1 AC 1053, [2008] 4 All ER 119 (cited in *R v Sivaraman* [2008] EWCA Crim 1736, [2009] 1 Cr App Rep (S) 469, [2008] All ER (D) 447 (Jul); reviewed in *R v Allpress* [2009] EWCA Crim 8, [2009] All ER (D) 126 (Jan)). See further *R v Briggs-Price* [2009] UKHL 19, [2009] 1 AC 1026, [2009] 2 WLR 1101; *R v Farquar* [2008] EWCA Crim 806, [2008] 2 Cr App Rep (S) 601, [2008] All ER (D) 140 (Mar). As to the calculation of the value of benefit to an individual where the criminal conduct was undertaken via a company see *R v Seager* [2009] EWCA Crim 1303, [2009] Crim LR 816, [2009] All ER (D) 283 (Jun) (reviewing *R v May*; *R v Green*; *Jennings v Crown Prosecution Service* [2008] UKHL 29, [2008] 1 AC 1046, [2008] 4 All ER 113). The proposition that a person acting purely in capacity of employee who has received only an

enhanced wage has necessarily, as a matter of law, to be taken to profit to the same extent as his employer is unsound: *R v Sivaraman*.

4 Proceeds of Crime Act 2002 s 76(5). A person obtains a pecuniary advantage if (among other things) he evades a liability to which he is personally subject: see *R v May* [2008] UKHL 28, [2008] 1 AC 1028, [2008] 4 All ER 97 (cited in *R v Sivaraman* [2008] EWCA Crim 1736, [2009] 1 Cr App Rep (S) 469, [2008] All ER (D) 447 (Jul); reviewed in *R v Allpress* [2009] EWCA Crim 8, [2009] 2 Cr App Rep (S) 399, [2009] All ER (D) 126 (Jan)). See also *R v Bakewell* [2006] EWCA Crim 2, [2006] 2 Cr App Rep (S) 277, [2006] Crim LR 453; *R v Rowbotham* [2006] EWCA Crim 747, [2006] 2 Cr App Rep (S) 642, [2006] All ER (D) 165 (Mar); and cf *R v Rigby* [2006] EWCA Crim 1653, [2006] 1 WLR 3067, [2007] 1 Cr App Rep (S) 428 (decided under corresponding provisions in the Criminal Justice Act 1988 s 71 (repealed)).

5 le if the court is proceeding under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

6 Proceeds of Crime Act 2002 s 8(1)(a).

7 Proceeds of Crime Act 2002 s 8(1)(b). As to assumptions that may be made see s 10; and PARA 395.

8 Proceeds of Crime Act 2002 s 8(2)(a).

9 Proceeds of Crime Act 2002 s 8(2)(b).

10 Proceeds of Crime Act 2002 s 8(3)(a). As to 'general criminal conduct' see PARA 391 note 13.

11 le a confiscation order under the Proceeds of Crime Act 2002 s 8(5).

12 Proceeds of Crime Act 2002 s 8(3)(b).

13 Proceeds of Crime Act 2002 s 8(3)(c).

14 Proceeds of Crime Act 2002 s 8(4).

15 Proceeds of Crime Act 2002 s 8(5)(a). However, s 8(5) does not apply to an amount which has been taken into account for the purposes of a deduction under s 8(5) on any earlier occasion: s 8(6).

16 Proceeds of Crime Act 2002 s 8(5)(b). The provisions listed in s 8(7) are:

- 591 (1) the Drug Trafficking Offences Act 1986 (repealed) (Proceeds of Crime Act 2002 s 8(7)(a));
- 592 (2) the Criminal Justice (Scotland) Act 1987 Pt 1 (repealed) (Proceeds of Crime Act 2002 s 8(7)(b));
- 593 (3) the Criminal Justice Act 1988 Pt 6 (repealed) (Proceeds of Crime Act 2002 s 8(7)(c));
- 594 (4) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588 (NI 17) (repealed) (Proceeds of Crime Act 2002 s 8(7)(d));
- 595 (5) the Drug Trafficking Act 1994 Pt 1 (repealed) (Proceeds of Crime Act 2002 s 8(7)(e));
- 596 (6) the Proceeds of Crime (Scotland) Act 1995 Pt 1 (repealed) (Proceeds of Crime Act 2002 s 8(7)(f));
- 597 (7) the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9) (repealed) (Proceeds of Crime Act 2002 s 8(7)(g)); and
- 598 (8) Pt 3 or Pt 4 (confiscation orders: Scotland and Northern Ireland) (s 8(7)(h)).

The reference to general criminal conduct in the case of a confiscation order made under any of the provisions listed in the Proceeds of Crime Act 2002 s 8(7) is a reference to conduct in respect of which a court is required or entitled to make one or more assumptions for the purpose of assessing a person's benefit from the conduct: s 8(8).

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NOTE 3--*Seager*, cited, reported at [2010] 1 WLR 815.

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395. Assumptions to made in case of criminal lifestyle.

If the court decides¹ that the defendant² has a criminal lifestyle³, it must make the following four assumptions for the purpose of deciding whether he has benefited from his general criminal conduct⁴ and deciding his benefit from the conduct⁵. The first assumption is that any property transferred to the defendant at any time after the relevant day⁶ was obtained by him as a result of his general criminal conduct⁷ and at the earliest time he appears to have held it⁸. The second assumption is that any property held by the defendant at any time after the date of conviction⁹ was obtained by him as a result of his general criminal conduct¹⁰ and at the earliest time he appears to have held it¹¹. The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct¹². The fourth assumption is that, for the purpose of valuing any property obtained¹³ (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it¹⁴. The court must not, however, make a required assumption in relation to particular property or expenditure if the assumption is shown to be incorrect¹⁵ or if there would be a serious risk of injustice¹⁶ if the assumption were made¹⁷. If the court does not make one or more of the required assumptions it must state its reasons¹⁸.

1 If the court decides under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

2 As to the meaning of 'defendant' see PARA 391 note 1.

3 As to when a defendant has a criminal lifestyle see PARA 392.

4 Proceeds of Crime Act 2002 s 10(1)(a). As to the meanings of 'general criminal conduct' and 'conduct' see PARA 391 note 13.

5 Proceeds of Crime Act 2002 s 10(1)(b).

6 For the purposes of the Proceeds of Crime Act 2002 s 10, the 'relevant day' is the first day of the period of six years ending with the day when proceedings for the offence concerned were started against the defendant (s 10(8)(a)) or if there are two or more offences and proceedings for them were started on different days, the earliest of those days (s 10(8)(b)); however, if a confiscation order mentioned in s 8(3)(c) has been made against the defendant at any time during the period mentioned in s 10(8), then the relevant day is the day when the defendant's benefit was calculated for the purposes of the last such confiscation order (s 10(9)(a)) and the second assumption does not apply to any property which was held by him on or before the relevant day (s 10(9)(b)).

7 Proceeds of Crime Act 2002 s 10(2)(a).

8 Proceeds of Crime Act 2002 s 10(2)(b).

9 The date of conviction is the date on which the defendant was convicted of the offence concerned (Proceeds of Crime Act 2002 s 10(10)(a)) or if there are two or more offences and the convictions were on different dates, the date of the latest (s 10(10)(b)).

10 Proceeds of Crime Act 2002 s 10(3)(a).

11 Proceeds of Crime Act 2002 s 10(3)(b).

12 Proceeds of Crime Act 2002 s 10(4).

13 As to deciding the value of property see PARA 396.

14 Proceeds of Crime Act 2002 s 10(5).

15 Proceeds of Crime Act 2002 s 10(6)(a).

16 'Serious risk of injustice' does not mean hardship to the defendant by virtue of the order: see *R v Jones* [2006] EWCA Crim 2061, [2007] 1 WLR 7, [2007] 1 Cr App Rep (S) 414 (the purpose of the Proceeds of Crime Act 2002 s 10(6) is not to provide for the exercise of discretion by the judge to determine whether it is fair to make the order against a particular defendant, but rather to ensure a sensible calculation of the benefit and to ensure that the assumptions are not so unreasonable or unjust in respect of the particular defendant that they should not be made); and see also *R v Singh* [2008] EWCA Crim 243, [2008] 2 Cr App Rep (S) 387.

17 Proceeds of Crime Act 2002 s 10(6)(b).

18 Proceeds of Crime Act 2002 s 10(7).

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396. Value of property.

The basic rule for the purpose of deciding the value at any time of property then held by a person¹ is that its value is the market value of the property at that time².

The following provisions apply for the purpose of deciding the value of property obtained by a person as a result of, or in connection with, his criminal conduct³ and for the purposes of determining the value of tainted goods⁴. The value of the property at the material time⁵ and the value at any time of a tainted gift is the greater of the following⁶:

1317 (1) the value⁷ of the property (at the time the person obtained it), or the value⁸ (at the time of the gift) of the property given, adjusted to take account of later changes in the value of money⁹;

1318 (2) the value (at the material time) of the property found:

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14. (a) if the person holds the property obtained, or if the recipient holds the property given, the property found is that property¹⁰;

15. (b) if he holds no part of the property obtained, or the recipient holds no part of the property given, the property found is any property which directly or indirectly represents it in his hands¹¹; and

16. (c) if he holds part of the property obtained, or if the recipient holds part of the property given, the property found is that part and any property which directly or indirectly represents the other part in his hands¹².

.13

1 Proceeds of Crime Act 2002 s 79(1). It is not a pre-requisite in establishing the market value of goods that the market in question is a lawful one, and hence the black market value of goods can be taken into account when valuing the benefit obtained by the defendant from their illegal importation, pursuant to ss 76(4), (7), 79(2), 80(2): see *R v Islam* [2009] UKHL 30, [2009] 3 WLR 1, [2009] All ER (D) 81 (Jun) (overruling *R v Hussain* [2006] EWCA Crim 621, [2006] All ER (D) 395 (Feb)). It is also consistent with both the language and the spirit of the Proceeds of Crime Act 2002 to take account of the black market value of goods when valuing the benefit obtained by the defendant from their illegal importation, even if such goods had a nil market value after seizure for the purposes of assessing the amount available for confiscation: *R v Islam*. The Proceeds of Crime Act 2002 s 79 has effect subject to ss 80, 81: s 79(5).

2 Proceeds of Crime Act 2002 s 79(2). However, if at that time another person holds an interest in the property, its value, in relation to the person mentioned in s 79(1), is the market value of his interest at that time, ignoring any charging order under the following repealed provisions: the Drug Trafficking Offences Act 1986 s 9, the Criminal Justice Act 1988 s 78, the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588 (NI 17), art 14, the Drug Trafficking Act 1994 s 27, or the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9), art 32: see the Proceeds of Crime Act 2002 s 79(3), (4)(a)-(e). The market value of property is the amount it would have cost the defendant to obtain the property legitimately, or the economic value to the loser, rather than the value the defendant could obtain if he sold it: *R v Rose*; *R v Whitwam* [2008] EWCA Crim 239, [2008] 3 All ER 315, [2008] 2 Cr App Rep 202.

3 Proceeds of Crime Act 2002 s 80(1).

4 See the Proceeds of Crime Act 2002 s 81.

5 Ie the time the court makes its decision: s 80(1).

6 See the Proceeds of Crime Act 2002 ss 80(2), 81(1).

7 References in the Proceeds of Crime Act 2002 s 80(2)(a) and (b) and s 81(1)(a), (b) to value are to the value found in accordance with s 79: ss 80(4), 81(3).

8 See note 7.

9 Proceeds of Crime Act 2002 ss 80(2)(a), 81(2)(a).

10 Proceeds of Crime Act 2002 ss 80(2)(b), (3)(a), 81(2)(b), (3)(a).

11 Proceeds of Crime Act 2002 ss 80(2)(b), (3)(b), 81(2)(b), (3)(b).

12 Proceeds of Crime Act 2002 ss 80(2)(b), (3)(c), 81(2)(b), (3)(b).

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NOTE 2--It is not necessary to consider the difficulties in realising jointly held property in determining its value: *R v Modjiri* [2010] EWCA Crim 829, [2010] All ER (D) 146 (Apr).

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397. Recoverable and available amounts.

For the purposes of making a confiscation order¹ the 'recoverable amount' is an amount equal to the defendant's benefit from the conduct² concerned³. But if the defendant shows that the available amount is less than that benefit the recoverable amount is the available amount⁴ or a nominal amount, if the available amount is nil⁵. If the court decides the available amount, it must include in the confiscation order a statement of its findings as to the matters relevant for deciding that amount⁶.

For the purposes of deciding the recoverable amount, the 'available amount' is the aggregate of: (1) the total of the values, at the time the confiscation order is made, of all the free property⁷ then held by the defendant minus the total amount payable in pursuance of obligations which then have priority⁸; and (2) the total of the values (at that time) of all tainted gifts⁹.

1 le for the purposes of the Proceeds of Crime Act 2002 s 6 (see PARA 391).

2 As to the meaning of 'defendant' see PARA 391 note 1. As to when a defendant has benefited see PARA 394. In calculating the defendant's benefit from the conduct concerned for the purposes of the Proceeds of Crime Act 2002 s 7(1) there must be ignored any property in respect of which a recovery order is in force under s 266 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2154), or (until a day to be appointed) a forfeiture order is in force under s 298(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2168): s 7(4) (prospectively substituted by the Policing and Crime Act 2009 Sch 7 paras, 99, 100). At the date at which this volume states the law no day had been appointed for this purpose.

3 Proceeds of Crime Act 2002 s 7(1). However if s 6(6) (see PARA 391) applies the recoverable amount is such amount as the court thinks just but does not exceed the amount found under s 7(1) or (2) as the case may be: s 7(3). In calculating the defendant's benefit from the conduct concerned for the purposes of s 7(1), any property in respect of which a recovery order is in force under s 266 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2154) or a forfeiture order is in force under s 298(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2168), must be ignored: s 7(4). See also *R v Nelson (Prosecution Appeal under section 31 of the Proceeds of Crime Act 2002)* [2009] EWCA Crim 1573, [2009] All ER (D) 283 (Jul); *R v Chen* [2009] EWCA Crim 2669.

4 Proceeds of Crime Act 2002 s 7(2)(a). Placing the onus of proving that the available amount is less than the recoverable amount on the defendant is not incompatible with the concept of a fair trial under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953; Cmd 8969)), art 6: Applications 19955/05 and 15085/06 *Grayson v United Kingdom* (2008) 48 EHRR 722, [2009] Crim LR 200, [2008] All ER (D) 110 (Sep), ECtHR. In connection with the defendant's duty in this matter see *R v Summers* [2008] EWCA Crim 872, [2008] 2 Cr App Rep (S) 569 (decided under corresponding provisions of the Criminal Justice Act 1988 (see PARA 459 et seq), and considering in particular *R v Barwick* [2001] 1 Cr App Rep (S) 445, [2001] Crim LR 52, [2000] All ER (D) 1398; *R v Barnham* [2005] EWCA Crim 1049, [2006] 1 Cr App Rep (S) 83, [2005] Crim LR 657). The Crown Court must have regard to a property adjustment order which has been made in favour of a third party, such as a spouse, in determining the 'available amount': *Webber v Webber* [2006] EWHC 2893 (Fam), [2007] 1 WLR 1052. See also *Gibson v Revenue and Customs Prosecution Office* [2008] EWCA Civ 645, [2009] 2 WLR 471, [2008] Fam Law 847 (court had no power to supplement provisions of confiscation order legislation to bring wife's share of matrimonial home within confiscation order despite finding she had guilty knowledge of source of husband's wealth).

5 Proceeds of Crime Act 2002 s 7(2)(b). See, however, s 6(6); and PARA 391.

6 Proceeds of Crime Act 2002 s 7(5).

7 Property is 'free' unless an order is in force in respect of it under any of the following: the Misuse of Drugs Act 1971 s 27 (forfeiture orders: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283), the Criminal

Justice (Northern Ireland) Order 1994, SI 1994/2795 (NI 15) art 11 (deprivation orders), the Proceeds of Crime (Scotland) Act 1995 Pt 2 (forfeiture of property used in crime), the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (deprivation orders: see **PARA 481**), the Terrorism Act 2000 s 23, s 23A (forfeiture orders: see **PARA 482**), s 111 (forfeiture orders: Northern Ireland only), s 245A (property freezing order: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) **PARA 2151**), s 246 (application for interim receiving order: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) **PARA 2153**), s 255A (application for prohibitory property order: applies in Scotland only), s 256 (application for interim administration order: applies in Scotland only), s 266 (civil recovery order: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) **PARA 2154**), s 295(2) (order for detention of seized cash: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) **PARA 2166**) or s 298(2) (order for forfeiture of detained cash: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) **PARA 2168**): Proceeds of Crime Act 2002 s 82(a)-(f) (s 82(f) amended by the Serious Organised Crime and Police Act 2005 Sch 6 paras 4, 5, the Counter-Terrorism Act 2008 Sch 9 para 7(3)). As from a day to be appointed it is additionally provided that property is 'free' unless it has been forfeited in pursuance of a forfeiture notice under the Proceeds of Crime Act 2002 s 297A or is detained under s 297C or s 297D (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): s 82 (prospectively amended by the Policing and Crime Act 2009 Sch 7 para 101). At the date at which this volume states the law no day had been appointed for this purpose. As to the meaning of 'property' see **PARA 391** note 13.

8 Proceeds of Crime Act 2002 s 9(1)(a). An obligation has priority if it is an obligation of the defendant: (1) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the confiscation order is made (s 9(2)(a)); or (2) to pay a sum which would be included among the preferential debts if the defendant's bankruptcy had commenced on the date of the confiscation order or his winding up had been ordered on that date (s 9(2)(b)). For these purposes, 'preferential debts' has the meaning given by the Insolvency Act 1986 s 386 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) **PARA 577**): Proceeds of Crime Act 2002 s 9(3).

9 Proceeds of Crime Act 2002 s 9(1)(b). As to the value of tainted gifts see s 81 and **PARA 396**.

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398. Tainted gifts.

Where no court has made a decision as to whether the defendant¹ has a criminal lifestyle², or a court has decided that the defendant has a criminal lifestyle³, a gift is tainted⁴ if it was made by the defendant at any time after the relevant day⁵ or if it was made by the defendant at any time and was of property⁶ which was obtained by the defendant as a result of or in connection with his general criminal conduct⁷ or which (in whole or part and whether directly or indirectly) represented in the defendant's hands property obtained by him as a result of or in connection with his general criminal conduct⁸. Where a court has decided that the defendant does not have a criminal lifestyle⁹, a gift is tainted if it was made by the defendant at any time after the date on which the offence concerned was committed¹⁰ or, if his particular criminal conduct consists of two or more offences and they were committed on different dates, the date of the earliest¹¹.

1 As to the meaning of 'defendant' see PARA 391 note 1.

2 Proceeds of Crime Act 2002 s 77(1)(a). As to when a defendant has a criminal lifestyle see PARA 392.

3 A gift may be a tainted gift whether it was made before or after 24 July 2002 (that is, the date on which the Proceeds of Crime Act 2002 was passed (ie received Royal Assent)): s 77(8). The definition of 'gift' is given an extended meaning by s 78. If the defendant transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer, he is to be treated as making a gift: s 78(1). If s 78(1) applies the property given is to be treated as such share in the property transferred as is represented by the fraction whose numerator is the difference between the two values mentioned in s 78(1) and whose denominator is the value of the property at the time of the transfer: s 78(2). References to a recipient of a tainted gift are references to a person to whom the defendant has made the gift: s 78(3).

4 Proceeds of Crime Act 2002 s 77(1)(b).

5 Proceeds of Crime Act 2002 s 77(2). The 'relevant day' for these purposes is the first day of the period of six years ending with the day when proceedings for the offence concerned were started against the defendant (s 77(9)(a)); or if there are two or more offences and proceedings for them were started on different days, the earliest of those days (s 77(9)(b)).

6 As to the meaning of 'property' see PARA 391 note 13.

7 Proceeds of Crime Act 2002 s 77(3)(a). As to the meaning of 'general criminal conduct' see PARA 391 note 13.

8 Proceeds of Crime Act 2002 s 77(3)(b).

9 Proceeds of Crime Act 2002 s 77(4).

10 Proceeds of Crime Act 2002 s 77(5)(a).

11 Proceeds of Crime Act 2002 s 77(5)(b). For these purposes, an offence which is a continuing offence is committed on the first occasion when it is committed (s 77(6)); and the defendant's particular criminal conduct includes any conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned (s 77(7)).

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399. Time for payment; interest on unpaid sums.

The amount ordered to be paid under a confiscation order¹ must be paid on the making of the order; but this is subject to the following provisions².

If the defendant³ shows that he needs time to pay the amount ordered to be paid, the court making the confiscation order may make an order allowing payment to be made in a specified period⁴. If within the specified period the defendant applies to the Crown Court for the period to be extended and the court believes there are exceptional circumstances, it may make an order extending the period⁵. The court must not make an order of either type⁶ unless it gives the prosecutor an opportunity to make representations⁷.

If the amount required to be paid by a person under a confiscation order is not paid when it is required to be paid, he must pay interest on the amount for the period for which it remains unpaid⁸. If an application has been made⁹ for an extension of the period for payment of the confiscation order¹⁰, the application has not been determined by the court¹¹, and the period of 12 months starting with the day on which the confiscation order was made has not ended¹², no amount is required to be paid under a confiscation order¹³.

1 Ie an order under the Proceeds of Crime Act 2002 s 6 (see PARA 391): s 88(6)(a).

2 Proceeds of Crime Act 2002 s 11(1).

3 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

4 Proceeds of Crime Act 2002 s 11(2). The specified period must start with the day on which the confiscation order is made (s 11(3)(a)) and must not exceed six months (s 11(3)(b)).

5 Proceeds of Crime Act 2002 s 11(4). The extended period must start with the day on which the confiscation order is made (s 11(5)(a)) and must not exceed 12 months (s 11(5)(b)). An order under s 11(4) may be made after the end of the specified period (s 11(6)(a)) but must not be made after the end of the period of 12 months starting with the day on which the confiscation order is made (s 11(6)(b)).

6 Ie under the Proceeds of Crime Act 2002 s 11(2) or (4) (see the text and notes 3-5).

7 Proceeds of Crime Act 2002 s 11(7) (amended by the Serious Crime Act 2007 Sch 8 para 3, Sch 14).

8 Proceeds of Crime Act 2002 s 12(1). The rate of interest is the same rate as that for the time being specified in the Judgments Act 1838 s 17 (ie 8% per annum): Proceeds of Crime Act 2002 s 12(2); and see the Judgments Act 1838 s 17 (amended by SI 1993/564). The amount of the interest must be treated as part of the amount to be paid under the confiscation order: Proceeds of Crime Act 2002 s 12(4).

9 Ie under the Proceeds of Crime Act 2002 s 11(4) (see the text and note 5).

10 Proceeds of Crime Act 2002 s 12(3)(a).

11 Proceeds of Crime Act 2002 s 12(3)(b).

12 Proceeds of Crime Act 2002 s 12(3)(c).

13 Proceeds of Crime Act 2002 s 12(3).

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400. Effect of confiscation order on court's other powers.

If the court makes a confiscation order¹ it must proceed as follows² in respect of the offence or offences concerned³.

The court must take account of the confiscation order before:

- 1319 (1) it imposes a fine on the defendant⁴; or
- 1320 (2) it makes:
- .14
- 17. (a) an order involving payment by the defendant, other than a compensation order⁵;
- 18. (b) a forfeiture order⁶; or
- 19. (c) a deprivation order⁷.
- .15

Subject to this, the court must leave the confiscation order out of account in deciding the appropriate sentence for the defendant⁸.

Where the Crown Court makes both a confiscation order and a compensation order against the same person in the same proceedings⁹, and the court believes he will not have sufficient means to satisfy both the orders in full¹⁰, the court must direct that so much of the compensation as it specifies is to be paid out of any sums recovered under the confiscation order; and the amount it specifies must be the amount it believes will not be recoverable because of the insufficiency of the person's means¹¹.

1 As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Ie as provided by the Proceeds of Crime Act 2002 s 13(2)-(4) (see the text and notes 4-8).

3 Proceeds of Crime Act 2002 s 13(1). As to references to the 'offence or offences concerned' see PARA 392 note 3.

4 Proceeds of Crime Act 2002 s 13(2)(a). As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

5 Proceeds of Crime Act 2002 s 13(2)(b), (3)(a). A 'compensation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375).

6 Proceeds of Crime Act 2002 s 13(3)(b), (d) (s 13(3)(d) amended by the Counter-Terrorism Act 2008 Sch 3 para 7(2)). A 'forfeiture order' is an order under the Misuse of Drugs Act 1971 s 27 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283) or the Terrorism Act 2000 ss 23, 23A (see PARA 482).

7 Proceeds of Crime Act 2002 s 13(3)(c). A 'deprivation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see PARA 481).

8 Proceeds of Crime Act 2002 s 13(4).

9 Proceeds of Crime Act 2002 s 13(5)(a).

10 Proceeds of Crime Act 2002 s 13(5)(b).

11 Proceeds of Crime Act 2002 s 13(6).

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B. PROCEDURAL MATTERS

401. Postponement of confiscation proceedings.

The court may:

- 1321 (1) proceed¹ to make a confiscation order² before it sentences the defendant³ for the offence (or any of the offences) concerned⁴; or
- 1322 (2) postpone proceedings⁵ for a confiscation order for a specified period⁶.

A period of postponement may be extended⁷. Unless there are exceptional circumstances⁸, a period of postponement (including one as extended) must not end after the permitted period ends⁹. The permitted period is two years starting with the date of conviction¹⁰; except that if the defendant appeals¹¹ against his conviction for the offence (or any of the offences) concerned¹², and the period of three months (starting with the day when the appeal is determined or otherwise disposed of) ends after such period of two years¹³, the permitted period is that period of three months¹⁴.

A postponement or extension may be made¹⁵:

- 1323 (a) on application by the defendant¹⁶;
- 1324 (b) on application by the prosecutor¹⁷;
- 1325 (c) by the court of its own motion¹⁸.

1 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

2 As to the meaning of 'confiscation order' see PARA 399 note 1.

3 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

4 Proceeds of Crime Act 2002 s 14(1)(a). As to references to the 'offence or offences concerned' see PARA 392 note 3. A power to sentence in advance of the completion of s 6 proceedings can be read into s 14(1)(a): see *Crown Prosecution Service v Gilleeney* [2009] EWCA Crim 193, [2009] Crim LR 455, [2009] All ER (D) 168 (Feb).

5 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391). The court may grant such a postponement without a hearing: CrimPR 58.2. Procedural errors relating to the postponement of confiscation proceedings are not fatal to making an order: see *R v Soneji* [2005] UKHL 49, [2006] 1 AC 340, [2006] 1 Cr App Rep (S) 430 (decided under corresponding provisions of the Criminal Justice Act 1988 (see PARA 459 et seq) and reviewing the case law in this area).

6 Proceeds of Crime Act 2002 s 14(1)(b).

7 Proceeds of Crime Act 2002 s 14(2). If proceedings are postponed for a period (s 14(8)(a)), and an application to extend the period is made before it ends (s 14(8)(b)), the application may be granted even after the period ends (s 14(8)).

8 Proceeds of Crime Act 2002 s 14(4).

9 Proceeds of Crime Act 2002 s 14(3).

10 Proceeds of Crime Act 2002 s 14(5). The date of conviction is: (1) the date on which the defendant was convicted of the offence concerned (s 14(9)(a)); or (2) if there are two or more offences and the convictions were on different dates, the date of the latest (s 14(9)(b)).

11 'Appealing' includes applying to a magistrates' court to state a case for the opinion of the High Court under the Magistrates' Courts Act 1980 s 111 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 885 et seq): Proceeds of Crime Act 2002 s 14(10).

12 Proceeds of Crime Act 2002 s 14(6)(a).

13 Proceeds of Crime Act 2002 s 14(6)(b).

14 Proceeds of Crime Act 2002 s 14(6).

15 A confiscation order may not be quashed only on the ground that there was a defect or omission in the procedure connected with the application for or the granting of a postponement: Proceeds of Crime Act 2002 s 14(11). However, s 14(11) does not apply if before it made the confiscation order, the court: (1) imposed a fine on the defendant (s 14(12)(a)); (2) made an order falling within s 13(3) (see PARA 400) (s 14(12)(b)); (3) made a compensation order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375) (Proceeds of Crime Act 2002 s 14(12)(c)). These provisions do not deprive the court of its jurisdiction to make a confiscation order where there has been an error in making an order for forfeiture: see *R v Donohoe* [2006] EWCA Crim 2200, [2007] 1 Cr App Rep (S) 548, [2006] All ER (D) 440 (Jul).

16 Proceeds of Crime Act 2002 s 14(7)(a).

17 Proceeds of Crime Act 2002 s 14(7)(b).

18 Proceeds of Crime Act 2002 s 14(7)(c).

UPDATE

401 Postponement of confiscation proceedings

NOTE 5--CrimPR 58.2 now Criminal Procedure Rules 2010, SI 2010/60, r 58.2.

NOTE 9--See *R v Iqbal* (2010) Times, 3 March, CA (application for postponement, or extended postponement, could only be made within permitted period).

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402. Effect of postponement.

If the court postpones proceedings¹ for a confiscation order² it may proceed to sentence the defendant³ for the offence (or any of the offences) concerned⁴. In sentencing the defendant for the offence⁵ (or any of the offences) concerned in the postponement period, the court must not:

- 1326 (1) impose a fine on him⁶;
- 1327 (2) make a compensation order⁷; or
- 1328 (3) make any other order involving payment of money, a forfeiture order or a deprivation order⁸.

If the court sentences the defendant for the offence (or any of the offences) concerned in the postponement period⁹, it may vary the sentence¹⁰ by imposing a fine on him¹¹ or making an order within head (2) or head (3) above¹², but it may do so only within the period of 28 days which starts with the last day of the postponement period¹³.

If the court postpones proceedings for a confiscation order but proceeds to sentence the defendant for the offence (or any of the offences) concerned, the provisions¹⁴ relating to the making of a confiscation order have effect as if the defendant's particular conduct¹⁵ included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned¹⁶.

1 le under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

2 As to the meaning of 'confiscation order' see PARA 399 note 1.

3 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

4 Proceeds of Crime Act 2002 s 15(1). As to references to the 'offence or offences concerned' see PARA 392 note 3.

5 References to 'sentencing the defendant for an offence' include references to dealing with him otherwise in respect of the offence: Proceeds of Crime Act 2002 s 88(4).

6 Proceeds of Crime Act 2002 s 15(2)(a).

7 Proceeds of Crime Act 2002 s 15(2)(c). A 'compensation order' referred to in the text is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375).

8 Proceeds of Crime Act 2002 s 15(2)(b). The orders referred to in head (3) in the text are the orders falling within s 13(3) (see PARA 400). If the court nevertheless makes an invalid forfeiture order, it is not thereafter deprived of jurisdiction to make a confiscation order: *R v Donahoe* [2006] EWCA Crim 2200, [2007] 1 Cr App Rep (S) 548, sub nom *R v Donahoe* (2006) Times, 20 October.

9 The postponement period is the period for which proceedings under the Proceeds of Crime Act 2002 s 6 are postponed (see PARA 391): s 15(7).

10 For the purposes of the Criminal Appeal Act 1968 s 18(2) (time limit for notice of appeal or of application for leave to appeal: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1863) and the Criminal Justice Act 1988 s 36, Sch 3 para 1 (time limit for notice of application for leave to refer a case under s 36: see PARA 66), the sentence must be regarded as imposed or made on the day on which it is varied under the Proceeds of Crime Act 2002 s 15(3): s 15(5).

- 11 Proceeds of Crime Act 2002 s 15(3)(a).
- 12 Proceeds of Crime Act 2002 s 15(3)(b), (c).
- 13 Proceeds of Crime Act 2002 s 15(4).
- 14 Ie the Proceeds of Crime Act 2002 s 6 (see PARA 391).
- 15 As to the meaning of 'criminal conduct' see PARA 391 note 13. As to the meaning of 'particular criminal conduct' see PARA 391 note 14.
- 16 Proceeds of Crime Act 2002 s 15(6).

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403. Statement of information, and defendant's response.

If the court is proceeding under the provisions relating to the making of a confiscation order¹ in a case where the prosecutor asks the court so to proceed², the prosecutor or the Director (as the case may be) must give the court a statement of information within the period the court orders³.

If the court is proceeding under the provisions relating to the making of a confiscation order in a case where it believes it appropriate to do so⁴, and it orders the prosecutor to give it a statement of information, the prosecutor must give it such a statement within the period the court orders⁵.

If the prosecutor believes the defendant⁶ has a criminal lifestyle⁷ the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues⁸:

- 1329 (1) whether the defendant has a criminal lifestyle⁹;
- 1330 (2) whether he has benefited from his general criminal conduct¹⁰;
- 1331 (3) his benefit from the conduct¹¹.

Such a statement must include information the prosecutor believes is relevant¹²:

- 1332 (a) in connection with the making by the court of a required assumption¹³; and
- 1333 (b) for the purpose of enabling the court to decide if the circumstances are such that it must not make such an assumption¹⁴.

If the prosecutor does not believe the defendant has a criminal lifestyle the statement of information is a statement of matters the prosecutor believes are relevant in connection with deciding these issues¹⁵:

- 1334 (i) whether the defendant has benefited from his particular criminal conduct¹⁶;
- and
- 1335 (ii) his benefit from the conduct¹⁷.

If the prosecutor gives the court a statement of information he may at any time give the court a further statement of information and he must give the court a further statement of information if it orders him to do so, and he must give it within the period the court orders¹⁸.

If the court makes an order under the above provisions¹⁹ it may at any time vary it by making another one²⁰.

If the prosecutor gives the court a statement of information and a copy is served on the defendant, the court may order the defendant to indicate (within the period it orders) the extent to which he accepts each allegation in the statement²¹, and so far as he does not accept such an allegation, to give particulars of any matters he proposes to rely on²². If the defendant accepts to any extent an allegation in a statement of information, the court may treat his acceptance as conclusive of the matters to which it relates for the purpose of deciding the

issues referred to in heads (1) to (3) or (i) to (ii)²³ (as the case may be) above²⁴. If the defendant fails in any respect to comply with such an order²⁵, he may be treated²⁶ as accepting every allegation in the statement of information, apart from any allegation in respect of which he has complied with the requirement²⁷ or any allegation that he has benefited from his general or particular criminal conduct²⁸. An order made under these provisions may be varied at any time by the court by making another one²⁹.

1 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Ie a case where the Proceeds of Crime Act 2002 s 6(3)(a) (see PARA 391) applies.

3 Proceeds of Crime Act 2002 s 16(1) (amended by the Serious Crime Act 2007 Sch 8 para 5(2), Sch 14). When the prosecutor is required to give a statement to the Crown Court, he must also, as soon as possible, serve a copy of his statement on the defendant: CrimPR 58.1(1).

4 Ie a case where the Proceeds of Crime Act 2002 s 6(3)(b) (see PARA 391) applies.

5 Proceeds of Crime Act 2002 s 16(2).

6 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

7 As to the circumstances under which the defendant may be judged to have a criminal lifestyle see PARA 392.

8 Proceeds of Crime Act 2002 s 16(3) (amended by the Serious Crime Act 2007 Sch 8 para 5(2), Sch 14). Any statement given to the Crown Court by the prosecutor under these provisions must, in addition, include the following information: (1) the name of the defendant; (2) the name of the person by whom the statement is made and the date on which it is made; and (3) where the statement is not given to the Crown Court immediately after the defendant has been convicted, the date on which and the place where the relevant conviction occurred: CrimPR 58.1(2).

9 Proceeds of Crime Act 2002 s 16(3)(a).

10 Proceeds of Crime Act 2002 s 16(3)(b). As to the meanings of 'criminal conduct' and 'general criminal conduct' see PARA 391 note 13. As to when a person benefits from conduct see PARA 394.

11 Proceeds of Crime Act 2002 s 16(3)(c).

12 Proceeds of Crime Act 2002 s 16(4) (amended by the Serious Crime Act 2007 Sch 8 para 5(4), Sch 14).

13 Proceeds of Crime Act 2002 s 16(4)(a). The 'required assumption' is the assumption under s 10 (see PARA 395).

14 Proceeds of Crime Act 2002 s 16(4)(b).

15 Proceeds of Crime Act 2002 s 16(5) (amended by the Serious Crime Act 2007 Sch 8 para 5(5), Sch 14).

16 Proceeds of Crime Act 2002 s 16(5)(a).

17 Proceeds of Crime Act 2002 s 16(5)(b).

18 Proceeds of Crime Act 2002 s 16(6) (amended by the Serious Crime Act 2007 Sch 8 para 5(5), Sch 14).

19 Ie under the Proceeds of Crime Act 2002 s 16 (see the text and notes 1-18).

20 Proceeds of Crime Act 2002 s 16(7).

21 Proceeds of Crime Act 2002 s 17(1)(a) (amended by the Serious Crime Act 2007 Sch 8 para 6, Sch 14). For the purposes of the Proceeds of Crime Act 2002 s 17 an allegation may be accepted or particulars may be given in a manner ordered by the court: s 17(4). Where, under s 17, the Crown Court orders the defendant to indicate the extent to which he accepts each allegation in a statement given by the prosecutor, the defendant must indicate this in writing to the prosecutor and must give a copy to the Crown Court: CrimPR 58.1(3).

22 Proceeds of Crime Act 2002 s 17(1)(b). See note 21.

23 le the issues referred to in the Proceeds of Crime Act 2002 s 16(3) (see heads (1)-(3) in the text) or s 16(5) (see heads (i)-(ii) in the text).

24 Proceeds of Crime Act 2002 s 17(2). No acceptance under s 17 that the defendant benefited from conduct is admissible in evidence in proceedings for an offence: s 17(6).

25 le under the Proceeds of Crime Act 2002 s 17(1) (see the text and notes 21-22).

26 le for the purposes of the Proceeds of Crime Act 2002 s 17(2) (see the text and notes 23-24).

27 Proceeds of Crime Act 2002 s 17(3)(a).

28 Proceeds of Crime Act 2002 s 17(3)(b). As to the meaning of 'particular criminal conduct' see PARA 391 note 14.

29 Proceeds of Crime Act 2002 s 17(5).

UPDATE

403-405 Statement of information, and defendant's response ... No order made: reconsideration of case

CrimPR 58.1, 58.3 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.1, 58.3.

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404. Provision of information by the defendant.

Where the court is proceeding under the provisions¹ relating to the making of a confiscation order² in a case where the prosecutor asks the court so to proceed³, or is so proceeding in a case where it believes it appropriate to do⁴ so, or it is considering whether to proceed⁵, the following provisions apply.

For the purpose of obtaining information to help it in carrying out its functions the court may at any time order the defendant⁶ to give it information specified in the order⁷. If the defendant fails without reasonable excuse to comply with such an order the court may draw such inference as it believes is appropriate⁸.

If the prosecutor accepts to any extent an allegation made by the defendant⁹:

- 1336 (1) in giving information required by an order¹⁰ for the provision of information¹¹; or
- 1337 (2) in any other statement given to the court in relation to any matter relevant to deciding the available amount¹²,

the court may treat the acceptance as conclusive of the matters to which it relates¹³.

If the court makes an order for the provision of information it may at any time vary it by making another one¹⁴.

1 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

2 As to the meaning of 'confiscation order' see PARA 399 note 1.

3 Proceeds of Crime Act 2002 s 18(1)(a). The text refers to a case where s 6(3)(a) (see PARA 391) applies.

4 Ie a case where the Proceeds of Crime Act 2002 s 6(3)(b) (see PARA 391) applies.

5 Proceeds of Crime Act 2002 s 18(1)(b).

6 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

7 Proceeds of Crime Act 2002 s 18(2). Such an order may require all or a specified part of the information to be given in a specified manner and before a specified date: s 18(3). No information given under s 18 which amounts to an admission by the defendant that he has benefited from criminal conduct is admissible in evidence in proceedings for an offence: s 18(9). As to the meaning of 'criminal conduct' see PARA 391 note 13. As to when a person benefits from conduct see PARA 394. Where the Crown Court orders the defendant to give it any information under s 18, the defendant must provide the information in writing and must, as soon as practicable, serve a copy of it on the prosecutor: CrimPR 58.1(4).

8 Proceeds of Crime Act 2002 s 18(4). Section 18(4) does not affect any power of the court to deal with the defendant in respect of a failure to comply with an order under s 18: s 18(5).

9 Proceeds of Crime Act 2002 s 18(6) (amended by the Serious Crime Act 2007 Sch 8 para 7, Sch 14). For these purposes, an allegation may be accepted in a manner ordered by the court: Proceeds of Crime Act 2002 s 18(7).

10 Ie an order under the Proceeds of Crime Act 2002 s 18.

- 11 Proceeds of Crime Act 2002 s 18(6)(a).
- 12 Proceeds of Crime Act 2002 s 18(6)(b). As to deciding the available amount see s 9; and PARA 397.
- 13 Proceeds of Crime Act 2002 s 18(6).
- 14 Proceeds of Crime Act 2002 s 18(8).

UPDATE

403-405 Statement of information, and defendant's response ... No order made: reconsideration of case

CrimPR 58.1, 58.3 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.1, 58.3.

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C. RECONSIDERATION

405. No order made: reconsideration of case.

Where:

- 1338 (1) the defendant¹:
- .16**
20. (a) is convicted of an offence or offences in proceedings before the Crown Court²;
21. (b) is committed³ to the Crown Court for sentence in respect of an offence or offences⁴; or
22. (c) is committed⁵ to the Crown Court in respect of an offence or offences with a view to a confiscation order being considered⁶,
- .17**
- 1339 but no court has proceeded under the provisions relating to the making of a confiscation order⁷;
- 1340 (2) there is evidence which was not available to the prosecutor on the relevant date⁸;
- 1341 (3) before the end of the period of six years starting with the date of conviction the prosecutor applies⁹ to the Crown Court to consider the evidence¹⁰; and
- 1342 (4) after considering the evidence, the court believes it is appropriate for it to proceed under the provisions relating to the making of confiscation orders¹¹,

the court must proceed under the provisions relating to the making of confiscation orders, and when it does so the following provisions¹² apply¹³.

If the court has already sentenced the defendant for the offence (or any of the offences) concerned¹⁴, the provisions relating to the making of confiscation orders have effect as if his particular criminal conduct¹⁵ included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned¹⁶.

The court must take account of conduct occurring before the relevant date¹⁷; of property obtained before that date¹⁸; and of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date¹⁹.

In relation to the assumptions to be made in the case of a criminal lifestyle²⁰:

- 1343 (i) the first and second assumptions do not apply with regard to property²¹ first held by the defendant on or after the relevant date²²;
- 1344 (ii) the third assumption does not apply with regard to expenditure incurred by him on or after that date²³; and
- 1345 (iii) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date²⁴.

The recoverable amount for the purposes of the provisions relating to the making of a confiscation order is such amount as the court believes is just²⁵, but does not exceed the amount found by the court under the provisions²⁶ relating to the recoverable amount²⁷.

In arriving at the just amount the court must have regard in particular to:

- 1346 (A) the amount found under the provisions relating to the recoverable amount²⁸;
- 1347 (B) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned²⁹;
- 1348 (C) any order involving payment, other than a compensation order³⁰, a forfeiture order³¹ or a deprivation order³² which has been made against the defendant in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property³³ held by him for the purposes of the provisions³⁴ relating to the available amount³⁵;
- 1349 (D) any order which has been made against him in respect of the offence (or any of the offences) concerned under the provisions relating to compensation orders³⁶.

If a compensation order has been made against the defendant in respect of the offence or offences concerned, the provisions³⁷ dealing with the case where the court believes that the defendant has insufficient means to satisfy a confiscation order and a compensation order do not apply³⁸.

1 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

2 Proceeds of Crime Act 2002 ss 6(1), (2)(a), 19(1)(a). See further PARA 391 note 2.

3 Until a day to be appointed the text refers to committal under the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105), s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105) or s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105). As from the appointed day, the text refers to committal under s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1123), s 3A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1124), s 3B (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1125), s 3C (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1126), s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1127), s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1128) or s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129): Proceeds of Crime Act 2002 s 6(2) (b) (prospectively amended by the Criminal Justice Act 2003 s 41, Sch 3 para 75(1), (2)). At the date at which this volume states the law no such day had been appointed.

4 Proceeds of Crime Act 2002 ss 6(2)(b) (prospectively amended: see note 3), 19(1)(a).

5 Ie under the Proceeds of Crime Act 2002 s 70 (see PARA 453).

6 Proceeds of Crime Act 2002 ss 6(2)(c), 19(1)(a).

7 Proceeds of Crime Act 2002 s 19(1)(a). The provisions relating to the making of a confiscation order are the provisions of s 6 (see PARA 391). As to the meaning of 'confiscation order' see PARA 399 note 1.

8 Proceeds of Crime Act 2002 s 19(1)(b). The 'relevant date' is: (1) if the court made a decision not to proceed under s 6 (see PARA 391), the date of the decision (s 19(9)(a)); and (2) if the court did not make such a decision, the date of conviction (s 19(9)(b)). The date of conviction is the date on which the defendant was convicted of the offence concerned (s 19(10)(a)) or if there are two or more offences and the convictions were on different dates, the date of the latest (s 19(10)(b)).

9 An application under the Proceeds of Crime Act 2002 s 19, s 20 (see PARA 406) or s 21 (see PARA 407) must be in writing and give details of: (1) the name of the defendant; (2) the date on which and the place where any relevant conviction occurred; (3) the date on which and the place where any relevant confiscation order was made or varied; (4) the grounds for the application; and (5) an indication of the evidence available to support the application: CrimPR 58.3(1), (2).

The application must be lodged with the Crown Court: CrimPR 58.3(3). The application must be served on the defendant at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 58.3(4).

10 Proceeds of Crime Act 2002 s 19(1)(c) (amended by the Serious Crime Act 2007 Sch 8 para 8, Sch 14).

11 Proceeds of Crime Act 2002 s 19(1)(d). The provisions relating to the making of a confiscation order are the provisions of s 6 (see PARA 391).

12 Ie the Proceeds of Crime Act 2002 s 19(3)-(8) (see the text and notes 14-38) applies.

13 Proceeds of Crime Act 2002 s 19(2).

14 As to references to 'sentencing the defendant for an offence' see PARA 402 note 5. As to references to the 'offence or offences concerned' see PARA 392 note 3.

15 As to the meaning of 'criminal conduct' see PARA 391 note 13. As to the meaning of 'particular criminal conduct' see PARA 391 note 14.

16 Proceeds of Crime Act 2002 s 19(3).

17 Proceeds of Crime Act 2002 s 19(4)(a). Section 19 applies instead of s 8(2) (see PARA 394).

18 Proceeds of Crime Act 2002 s 19(4)(b). See note 17. As to when property is 'obtained' by a person see PARA 391 note 13.

19 Proceeds of Crime Act 2002 s 19(4)(c). See note 17. As to references to property obtained in connection with conduct see PARA 391 note 13.

20 Ie the assumptions made under the Proceeds of Crime Act 2002 s 10 (see PARA 395).

21 As to the meaning of 'property' see PARA 391 note 13.

22 Proceeds of Crime Act 2002 s 19(5)(a).

23 Proceeds of Crime Act 2002 s 19(5)(b).

24 Proceeds of Crime Act 2002 s 19(5)(c).

25 Proceeds of Crime Act 2002 s 19(6)(a).

26 Ie the Proceeds of Crime Act 2002 s 7 (see PARAS 391, 397).

27 Proceeds of Crime Act 2002 s 19(6)(b).

28 Proceeds of Crime Act 2002 s 19(7)(a).

29 Proceeds of Crime Act 2002 s 19(7)(b).

30 Ie an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375).

31 Ie an order under the Misuse of Drugs Act 1971 s 27 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283) or the Terrorism Act 2000 s 23 (see PARA 482).

32 Ie an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see PARA 481).

33 As to when property is 'free' see PARA 397 note 7.

34 Ie the Proceeds of Crime Act 2002 s 9 (see PARA 397).

35 Proceeds of Crime Act 2002 s 19(7)(c).

36 Proceeds of Crime Act 2002 s 19(7)(d).

37 Ie the Proceeds of Crime Act 2002 s 13(5), (6) (see PARA 400).

38 Proceeds of Crime Act 2002 s 19(8).

UPDATE

403-405 Statement of information, and defendant's response ... No order made: reconsideration of case

CrimPR 58.1, 58.3 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.1, 58.3.

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406. No order made: reconsideration of benefit.

The provisions set out below apply if the following two conditions are satisfied¹.

The first condition is that in proceeding under the provisions² relating to the making of a confiscation order³ the court has decided that:

1350 (1) the defendant⁴ has a criminal lifestyle⁵ but has not benefited⁶ from his general criminal conduct⁷; or

1351 (2) the defendant does not have a criminal lifestyle and has not benefited from his particular criminal conduct⁸.

The second condition is that⁹:

1352 (a) there is evidence which was not available to the prosecutor when the court decided that the defendant had not benefited from his general or particular criminal conduct¹⁰;

1353 (b) before the end of the period of six years starting with the date of conviction the prosecutor applies to the Crown Court to consider the evidence¹¹; and

1354 (c) after considering the evidence, the court concludes that it would have decided that the defendant had benefited from his general or particular criminal conduct (as the case may be) if the evidence had been available to it¹².

Where the above conditions are satisfied, the court: (i) must make a fresh decision¹³ whether the defendant has benefited from his general or particular conduct (as the case may be)¹⁴; (ii) may make¹⁵ a confiscation order¹⁶.

If the court proceeds under the provisions relating to the making of a confiscation order by virtue of the above provisions, the provisions apply with modifications¹⁷.

1 Proceeds of Crime Act 2002 s 20(1).

2 Ie the Proceeds of Crime Act 2002 s 6 (see PARA 391).

3 As to the meaning of 'confiscation order' see PARA 399 note 1.

4 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

5 As to the circumstances under which the defendant may be judged to have a 'criminal lifestyle' see PARA 392.

6 As to when a person benefits from conduct see PARA 394.

7 Proceeds of Crime Act 2002 s 20(2)(a). As to the meanings of 'criminal conduct' and 'general criminal conduct' see PARA 391 note 13.

8 Proceeds of Crime Act 2002 s 20(2)(b). As to the meaning of 'particular criminal conduct' see PARA 391 note 14.

9 Proceeds of Crime Act 2002 s 20(4) (amended by the Serious Crime Act 2007 Sch 8 para 9(2), Sch 14).

10 Proceeds of Crime Act 2002 s 20(4)(a).

11 Proceeds of Crime Act 2002 s 20(4)(b) (amended by the Serious Crime Act 2007 Sch 8 para 9(3), Sch 14).

12 Proceeds of Crime Act 2002 s 20(4)(c).

13 Ie under the Proceeds of Crime Act 2002 s 6(4)(b) or (c) (see PARA 391).

14 Proceeds of Crime Act 2002 s 20(5)(a).

15 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

16 Proceeds of Crime Act 2002 s 20(5)(b).

17 Proceeds of Crime Act 2002 s 20(6). If the court has already sentenced the defendant for the offence (or any of the offences) concerned, s 6 (see PARA 391) has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned: s 20(7). As to references to the 'offence or offences concerned' see PARA 392 note 3. As to references to 'sentencing the defendant for an offence' see PARA 402 note 5.

Section 8(2) (see PARA 394) does not apply, and the rules applying instead are that the court must:

599 (1) take account of conduct occurring before the date of the original decision that the defendant had not benefited from his general or particular criminal conduct (s 20(8)(a));

600 (2) take account of property obtained before that date (s 20(8)(b));

601 (3) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date (s 20(8)(c)).

As to the meaning of 'property' see PARA 391 note 13. As to when property is 'obtained' by a person, and as to references to property obtained in connection with conduct, see PARA 391 note 13.

In s 10 (see PARA 395):

602 (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the date of the original decision that the defendant had not benefited from his general or particular criminal conduct (s 20(9)(a));

603 (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date (s 20(9)(b));

604 (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date (s 20(9)(c)).

The recoverable amount (see PARA 397) for the purposes of s 6 is such amount as the court believes is just but does not exceed the amount found under s 7 (see PARAS 391, 397) (s 20(10)). In arriving at the just amount the court must have regard in particular to:

605 (i) the amount found under s 7 (s 20(11)(a));

606 (ii) any fine imposed on the defendant in respect of the offence (or any of the offences) concerned (s 20(11)(b));

607 (iii) any order which falls within s 13(3) (see PARA 400) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property held by him for the purposes of s 9 (see PARA 397) (s 20(11)(c)); and

608 (iv) any order which has been made against him in respect of the offence (or any of the offences) concerned under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (compensation orders: see PARA 375) (Proceeds of Crime Act 2002 s 20(11)(d)).

As to when property is 'free' see PARA 397 note 7.

If an order for the payment of compensation under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (has been made against the defendant in respect of the offence or offences concerned, the provisions of the Proceeds of Crime Act 2002 s 13(5), (6) (see PARA 400) do not apply: s 20(12).

The date of conviction is the date found by applying s 19(10) (see PARA 405): s 20(13).

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407. Order made: reconsideration of benefit.

The provisions set out below apply if:

- 1355 (1) a court has made a confiscation order¹;
- 1356 (2) there is evidence which was not available to the prosecutor at the relevant time²;
- 1357 (3) the prosecutor believes that if the court were to find the amount of the defendant's benefit³ it would exceed the relevant amount⁴;
- 1358 (4) before the end of the period of six years starting with the date of conviction⁵ the prosecutor applies⁶ to the Crown Court to consider the evidence⁷; and
- 1359 (5) after considering the evidence, the court believes it is appropriate for it to proceed to reconsider the benefit⁸.

In such a case the court must make a new calculation of the defendant's⁹ benefit from the conduct concerned¹⁰, and when it does so there are a number of modifications to the material part of the provisions¹¹ relating to the making of a confiscation order¹².

If the amount found under the new calculation of the defendant's benefit exceeds the relevant amount, the court:

- 1360 (a) must make a new calculation of the recoverable amount¹³ for the purposes of the provisions relating to the making of a confiscation order¹⁴; and
- 1361 (b) if it exceeds¹⁵ the amount required to be paid under the confiscation order, may vary the order by substituting for the amount required to be paid such amount as it believes is just¹⁶.

1 Proceeds of Crime Act 2002 s 21(1)(a). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Proceeds of Crime Act 2002 s 21(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 10, Sch 14). The 'relevant time' is:

609 (1) when the court calculated the defendant's benefit for the purposes of the confiscation order, if the Proceeds of Crime Act 2002 s 21 (see the text and notes 3-16) has not applied previously (s 21(12)(a));

610 (2) when the court last calculated the defendant's benefit in pursuance of s 21, if s 21 has applied previously (s 21(12)(b)).

3 ie in pursuance of the Proceeds of Crime Act 2002 s 21 (see the text and notes 4-16). As to when a person benefits from conduct see PARA 394.

4 Proceeds of Crime Act 2002 s 21(1)(c) (amended by the Serious Crime Act 2007 Sch 8 para 10, Sch 14). The 'relevant amount' is:

611 (1) the amount found as the defendant's benefit for the purposes of the confiscation order, if the Proceeds of Crime Act 2002 s 21 has not applied previously (s 21(13)(a));

612 (2) the amount last found as the defendant's benefit in pursuance of s 21, if s 21 has applied previously (s 21(13)(b)).

5 The date of conviction is the date found by applying the Proceeds of Crime Act 2002 s 19(10) (see PARA 405): s 21(14).

6 See PARA 405.

7 Proceeds of Crime Act 2002 s 21(1)(d) (amended by the Serious Crime Act 2007 Sch 8 para 10, Sch 14).

8 Proceeds of Crime Act 2002 s 21(1)(e).

9 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

10 Proceeds of Crime Act 2002 s 21(2).

11 Ie the Proceeds of Crime Act 2002 s 6 (see PARA 391).

12 Proceeds of Crime Act 2002 s 21(2). If a court has already sentenced the defendant for the offence (or any of the offences) concerned, s 6 (see PARA 391) has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned: s 21(3). As to references to the 'offence or offences concerned' see PARA 392 note 3. As to references to 'sentencing the defendant for an offence' see PARA 402 note 5. As to the meaning of 'criminal conduct' see PARA 391 note 13. As to the meaning of 'particular criminal conduct' see PARA 391 note 14.

Section 8(2) (see PARA 394) does not apply, and the rules applying instead are that the court must:

613 (1) take account of conduct occurring up to the time it decided the defendant's benefit for the purposes of the confiscation order (s 21(4)(a));

614 (2) take account of property obtained up to that time (s 21(4)(b)); and

615 (3) take account of property obtained after that time if it was obtained as a result of or in connection with conduct occurring before that time (s 21(4)(c)).

As to the meaning of 'property' see PARA 391 note 13. As to when property is 'obtained' by a person, and as to references to property obtained in connection with conduct, see PARA 391 note 13.

In applying s 8(5) (see PARA 394), the confiscation order must be ignored: s 21(5).

In s 10 (see PARA 395):

616 (a) the first and second assumptions do not apply with regard to property first held by the defendant after the time the court decided his benefit for the purposes of the confiscation order (s 21(6)(a));

617 (b) the third assumption does not apply with regard to expenditure incurred by him after that time (s 21(6)(b)); and

618 (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him after that time (s 21(6)(c)).

13 As to the meaning of 'recoverable amount' see PARA 397.

14 Proceeds of Crime Act 2002 s 21(7)(a). In applying s 21(7)(a) the court must:

619 (1) take the new calculation of the defendant's benefit (s 21(8)(a)); and

620 (2) apply s 9 (see PARA 397) as if references to the time the confiscation order is made were references to the time of the new calculation of the recoverable amount and as if references to the date of the confiscation order were references to the date of that new calculation (s 21(8)(b)).

15 In deciding under the Proceeds of Crime Act 2002 s 21 whether one amount exceeds another the court must take account of any change in the value of money: s 21(11).

16 Proceeds of Crime Act 2002 s 21(7)(b). In applying s 21(7)(b) the court must have regard in particular to:

621 (1) any fine imposed on the defendant for the offence (or any of the offences) concerned (s 21(9)(a));

- 622 (2) any order which falls within s 13(3) (see PARA 400) and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property (see PARA 397 note 7) held by him for the purposes of s 9 (see PARA 397) (s 21(9)(b));
- 623 (3) any order which has been made against him in respect of the offence (or any of the offences) concerned under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375) (Proceeds of Crime Act 2002 s 21(9)(c)).

As to when property is 'free' see PARA 397 note 7.

However, in applying s 21(7)(b) the court must not have regard to an order falling within s 21(9)(c) (see head (3) above) if a court has made a direction under s 13(6) (see PARA 400): s 21(10).

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408. Order made: reconsideration of available amount.

The provisions set out below apply if:

- 1362 (1) a court has made a confiscation order¹;
- 1363 (2) the amount required to be paid was less than the defendant's benefit²; and
- 1364 (3) the prosecutor³, or an appointed⁴ receiver⁵ applies to the Crown Court to make a new calculation of the available amount⁶.

In such a case, the court must make the new calculation, and in doing so it must apply the provisions⁷ relating to the determination of the available amount as if references to the time the confiscation order is made were references to the time of the new calculation and as if references to the date of the confiscation order were references to the date of the new calculation⁸.

If the amount found under the new calculation exceeds the relevant amount⁹, the court may vary the order by substituting for the amount required to be paid such amount as:

- 1365 (a) it believes is just¹⁰; but
- 1366 (b) does not exceed the amount found as the defendant's benefit from the conduct concerned¹¹.

In deciding what is just the court must have regard in particular to:

- 1367 (i) any fine imposed on the defendant for the offence (or any of the offences) concerned¹²;
- 1368 (ii) any order which is an order involving payment by the defendant (other than a compensation order)¹³, a forfeiture order¹⁴ or a deprivation order¹⁵, and has been made against him in respect of the offence (or any of the offences) concerned and has not already been taken into account by the court in deciding what is the free property¹⁶ held by him for the purposes of the provisions relating to the determination of the available amount¹⁷; and
- 1369 (iii) any compensation order which has been made against him in respect of the offence (or any of the offences) concerned¹⁸.

1 Proceeds of Crime Act 2002 s 22(1)(a). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Proceeds of Crime Act 2002 s 22(1)(b). As to when a person benefits from conduct see PARA 394. As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

3 Proceeds of Crime Act 2002 s 22(2)(a).

4 le under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

5 Proceeds of Crime Act 2002 s 22(2)(c) (amended by the Serious Crime Act 2007 Sch 8 para 11, Sch 14). The application must be in writing and may be supported by a witness statement: CrimPR 58.4(1), (2). The application and any witness statement must be lodged with the Crown Court: CrimPR 58.4(3). The application and any witness statement must be served on: (1) the defendant; (2) the receiver (if the prosecutor is making

the application and a receiver has been appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439)); and (3) if the receiver is making the application, the prosecutor, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 58.4(4).

6 Proceeds of Crime Act 2002 s 22(1)(c). As to the meaning of 'available amount' see PARA 397.

7 Ie the Proceeds of Crime Act 2002 s 9 (see PARA 397).

8 Proceeds of Crime Act 2002 s 22(3). Thus, assets lawfully acquired after the confiscation order was made can be treated as part of the new available amount: see *R v Bates* [2006] EWCA Crim 1015, [2007] 1 Cr App Rep (S) 9, [2006] All ER (D) 59 (Apr) (decided under corresponding provisions of the Drug Trafficking Act 1994 (see PARA 474)).

9 The relevant amount is:

624 (1) the amount found as the available amount for the purposes of the confiscation order, if the Proceeds of Crime Act 2002 s 22 has not applied previously (s 22(8)(a));

625 (2) the amount last found as the available amount in pursuance of s 22, if s 22 has applied previously (s 22(8)(b)).

10 Proceeds of Crime Act 2002 s 22(4)(a).

11 Proceeds of Crime Act 2002 s 22(4)(b). In deciding under s 22 whether one amount exceeds another, the court must take account of any change in the value of money: s 22(7). The amount found as the defendant's benefit from the conduct concerned is:

626 (1) the amount so found when the confiscation order was made (s 22(9)(a)); or

627 (2) if one or more new calculations of the defendant's benefit have been made under s 21 (see PARA 407), the amount found on the occasion of the last such calculation (s 22(9)(b)).

12 Proceeds of Crime Act 2002 s 22(5)(a). As to references to the 'offence or offences concerned' see PARA 392 note 3.

13 Ie an order falling within the Proceeds of Crime Act 2002 s 13(3)(a) (see PARA 400). A 'compensation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375).

14 Ie an order falling within the Proceeds of Crime Act 2002 s 13(3)(a) or s 13(3)(d) (see PARA 400). A 'forfeiture order' is an order under the Misuse of Drugs Act 1971 s 27 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283) or the Terrorism Act 2000 s 23 (see PARA 482).

15 Ie an order falling within the Proceeds of Crime Act 2002 s 13(3)(c) (see PARA 400). A 'deprivation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see PARA 481).

16 As to when property is 'free' see PARA 397 note 7.

17 Proceeds of Crime Act 2002 s 22(5)(b).

18 Proceeds of Crime Act 2002 s 22(5)(c). However, in deciding what is just the court must not have regard to an order falling within s 22(5)(c) if a court has made a direction under s 13(6) (see PARA 400): s 22(6).

UPDATE

408-410 Order made: reconsideration of available amount ... Inadequacy of available amount: discharge of order

CrimPR 58.4-58.6 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.4-58.6.

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409. Inadequacy of available amount: variation of order.

Where a court has made a confiscation order¹, and the defendant² or an appointed receiver³ applies⁴ to the Crown Court to vary the order⁵ on the ground that the available amount⁶ is inadequate to pay the amount of the order⁷, the court must calculate the available amount, and in doing so must apply the provisions⁸ relating to the determination of the available amount as if references to the time the confiscation order is made were references to the time of the calculation and as if the reference to the date of the confiscation were references to the date of the calculation⁹.

If the court finds that the available amount (as so calculated) is inadequate for the payment of any amount remaining to be paid under the confiscation order, it may vary the order by substituting for the amount required to be paid such smaller amount as the court believes is just¹⁰.

If a person has been adjudged bankrupt or his estate has been sequestrated, or if an order for the winding up of a company¹¹ has been made, the court must take into account the extent to which realisable property¹² held by that person or that company may be distributed among creditors¹³.

The court may disregard any inadequacy which it believes is attributable (wholly or partly) to anything done by the defendant for the purpose of preserving property held by the recipient of a tainted gift from any risk¹⁴ of realisation¹⁵.

1 Proceeds of Crime Act 2002 s 23(1)(a). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

3 Ie under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

4 The application must be in writing and may be supported by a witness statement: CrimPR 58.5(1), (2). The application and any witness statement must be lodged with the Crown Court: CrimPR 58.5(3). The application and any witness statement must be served on: (1) the prosecutor; (2) the defendant, if the receiver is making the application; and (3) the receiver, if the defendant is making the application and a receiver has been appointed under s 50 (see PARA 439), at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 58.5(4).

5 Ie under the Proceeds of Crime Act 2002 s 23.

6 As to the meaning of 'available amount' see PARA 397.

7 Proceeds of Crime Act 2002 s 23(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 12, Sch 14).

8 Ie the Proceeds of Crime Act 2002 s 9 (see PARA 397).

9 Proceeds of Crime Act 2002 s 23(2). See *R v Rooney (appeal under s 31 of the Proceeds of Crime Act 2002)* [2007] EWCA Crim 236, [2007] All ER (D) 238 (Jan) (it is inappropriate to proceed under the Proceeds of Crime Act 2002 s 23 after cash has been seized and an order for forfeiture has been made).

10 Proceeds of Crime Act 2002 s 23(3). If a property adjustment order has been made after the confiscation order but before enforcement, the Crown Court must have regard to it in varying the available amount: *Webber v Webber* [2006] EWHC 2893 (Fam), [2007] 1 WLR 1052. Where realisable assets at the time a confiscation order is made include unidentified assets, the fact that a particular asset is no longer available for realisation

does not demonstrate the inadequacy of the current value of realisable assets: *Telli v Customs Prosecution Office* [2007] EWCA Civ 1385, [2008] 3 All ER 405, [2008] 2 Cr App Rep (S) 278.

Where the Crown Court has determined in confiscation proceedings that the defendant has hidden assets, it is not open to the defendant to challenge that finding on an application under the Proceeds of Crime Act 2002 s 23, for variation of the confiscation order on the grounds of the inadequacy of the available amount: see *R v Younis* [2008] EWCA Crim 2950, [2009] 2 Cr App Rep (S) 247, [2009] Crim LR 372.

11 For these purposes, 'company' means any company which may be wound up under the Insolvency Act 1986 (see **COMPANY AND PARTNERSHIP INSOLVENCY**) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19): Proceeds of Crime Act 2002 s 23(6).

12 'Realisable property' is: (1) any free property held by the defendant (Proceeds of Crime Act 2002 s 83(a)); and (2) any free property held by the recipient of a tainted gift (s 83(b)). As to the meaning of 'property', and as to when property is 'held' by a person, see PARA 391 note 13. As to when property is 'free' see PARA 397 note 7; and as to 'tainted gifts' see PARA 398.

13 Proceeds of Crime Act 2002 s 23(4).

14 Ie under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91).

15 Proceeds of Crime Act 2002 s 23(5).

UPDATE

408-410 Order made: reconsideration of available amount ... Inadequacy of available amount: discharge of order

CrimPR 58.4-58.6 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.4-58.6.

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410. Inadequacy of available amount: discharge of order.

Where:

- 1370 (1) a court has made a confiscation order¹;
- 1371 (2) the designated officer for the magistrates' court applies² to the Crown Court for the discharge of the order³; and
- 1372 (3) the amount remaining to be paid under the order is less than £1,000⁴,

the court must calculate the available amount⁵, and in doing so it must apply the provisions⁶ relating to the determination of the available amount as if references to the time the confiscation order is made were references to the time of the calculation and as if references to the date of the confiscation order were references to the date of the calculation⁷.

If the court:

- 1373 (a) finds that the available amount (as so calculated) is inadequate to meet the amount remaining to be paid⁸; and
- 1374 (b) is satisfied that the inadequacy is due wholly to a specified reason or a combination of specified reasons⁹,

it may discharge the confiscation order¹⁰. The specified reasons are:

- 1375 (i) in a case where any of the realisable property¹¹ consists of money in a currency other than sterling, that fluctuations in currency exchange rates have occurred¹²; and
- 1376 (ii) any reason specified by the Secretary of State by order¹³.

1 Proceeds of Crime Act 2002 s 24(1)(a). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 The following applies where an officer makes an application under the Proceeds of Crime Act 2002 s 24 or s 25 (see PARA 411) for the discharge of a confiscation order: CrimPR 58.6(1). The application must be in writing and give details of:

- 628 (1) the confiscation order (CrimPR 58.6(2)(a));
- 629 (2) the amount outstanding under the order (CrimPR 58.6(2)(b)); and
- 630 (3) the grounds for the application (CrimPR 58.6(2)(c)).

The application must be served on: (a) the defendant; (b) the prosecutor; and (c) any receiver appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439): CrimPR 58.6(3).

The Crown Court may determine the application without a hearing unless a person listed in CrimPR 58.6(3) (see heads (a)-(c)) indicates, within seven days after the application was served on him, that he would like to make representations: CrimPR 58.6(4). If the Crown Court makes an order discharging the confiscation order, the court must, at once, send a copy of the order to: (i) the magistrates' courts officer who applied for the order; (ii) the defendant; (iii) the prosecutor; and (iv) any receiver appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439): CrimPR 58.6(5).

3 Proceeds of Crime Act 2002 s 24(1)(b) (amended by the Courts Act 2003 s 109(1), Sch 8 para 406(a)).

4 Proceeds of Crime Act 2002 s 24(1)(c).

The Secretary of State may by order vary the amount for the time being specified in head (3) in the text: s 24(5). At the date at which this volume states the law no such order had been made.

5 As to the meaning of 'available amount' see PARA 397.

6 Ie the Proceeds of Crime Act 2002 s 9 (see PARA 397).

7 Proceeds of Crime Act 2002 s 24(2).

8 Proceeds of Crime Act 2002 s 24(3)(a).

9 Proceeds of Crime Act 2002 s 24(3)(b).

10 Proceeds of Crime Act 2002 s 24(3).

11 As to the meaning of 'realisable property' see PARA 409 note 12.

12 Proceeds of Crime Act 2002 s 24(4)(a).

13 Proceeds of Crime Act 2002 s 24(4)(b). At the date at which this volume states the law no such order had been made.

UPDATE

408-410 Order made: reconsideration of available amount ... Inadequacy of available amount: discharge of order

CrimPR 58.4-58.6 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.4-58.6.

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411. Small amount outstanding: discharge of debt.

Where:

- 1377 (1) a court has made a confiscation order¹;
- 1378 (2) the designated officer for a magistrates' court applies² to the Crown Court for the discharge of the order³; and
- 1379 (3) the amount remaining to be paid under the order is £50 or less⁴,

the court may discharge the order⁵.

1 Proceeds of Crime Act 2002 s 25(1)(a). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 As to the making of an application under this provision see PARA 410 note 2.

3 Proceeds of Crime Act 2002 s 25(1)(b) (amended by the Courts Act 2003 s 109(1), Sch 8 para 406(b)).

4 Proceeds of Crime Act 2002 s 25(1)(c).

The Secretary of State may by order vary the amount for the time being specified in head (3) in the text: s 25(3). At the date at which this volume states the law no such order had been made.

5 Proceeds of Crime Act 2002 s 25(2).

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412. Information.

Where:

1380 (1) the court proceeds under the provisions relating to the making of a confiscation order¹ in a case² where, no order having been made, there is a reconsideration of the case or of the decision that there was no benefit to the defendant from the offence or offences concerned³; or

1381 (2) an order having been made, the prosecutor applies⁴ for a reconsideration of the benefit to the defendant from such offence or offences⁵,

the prosecutor must give the court a statement of information within the period which the court orders⁶.

¹ ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391). As to the meaning of 'confiscation order' see PARA 399 note 1.

² ie where the court proceeds in pursuance of the Proceeds of Crime Act 2002 s 19 (see PARA 405) or s 20 (see PARA 406).

³ Proceeds of Crime Act 2002 s 26(1)(a).

⁴ ie under the Proceeds of Crime Act 2002 s 21 (see PARA 407).

⁵ Proceeds of Crime Act 2002 s 26(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 13(2), Sch 14).

⁶ Proceeds of Crime Act 2002 s 26(2)(a) (amended by the Serious Crime Act 2007 Sch 8 para 13(3), Sch 14). In such a case:

631 (1) the Proceeds of Crime Act 2002 s 16 (see PARA 403) applies accordingly (with appropriate modifications where the prosecutor or the Director applies under s 21 (see PARA 407)) (s 26(2)(b));

632 (2) s 17 (see PARA 403) applies accordingly (s 26(2)(c)); and

633 (3) s 18 (see PARA 404) applies as it applies in the circumstances mentioned in s 18(1) (see PARA 404 text and notes 1-5) (s 26(2)(d)).

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D. DEFENDANT ABSCONDS

413. Defendant convicted or committed.

Where a defendant¹ absconds after:

- 1382 (1) he is convicted of an offence or offences in proceedings before the Crown Court²;
- 1383 (2) he is committed³ to the Crown Court for sentence in respect of an offence or offences⁴; or
- 1384 (3) he is committed⁵ to the Crown Court in respect of an offence or offences with a view to a confiscation order being considered⁶,

and:

- 1385 (a) the prosecutor applies to the Crown Court to proceed as described below⁷;
- and
- 1386 (b) the court believes it is appropriate for it to do so⁸,

the court must, subject to certain modifications⁹, proceed under the provisions relating to the making of a confiscation order in the same way as it must proceed if the two conditions mentioned in them are satisfied¹⁰.

1 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

2 Proceeds of Crime Act 2002 s 27(1), (2)(a).

3 Until a day to be appointed, the text refers to committal under the Powers of Criminal Courts (Sentencing) Act 2000 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105), s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105) or s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1105); and as from the appointed day, the text refers to committal under s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1123), s 3A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1124), s 3B (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1125), s 3C (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1126), s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1127), s 4A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1128) or s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1129): see the Proceeds of Crime Act 2002 s 27(2)(b) (amended and prospectively amended by the Criminal Justice Act 2003 s 41, Sch 3 para 75(1), (3)). At the date at which this volume states the law this amendment was in force only in relation to cases committed for sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 3C: see the Criminal Justice Act 2003 (Commencement No 9) Order 2005, SI 2005/1267, art 2(1), (2)(c).

4 Proceeds of Crime Act 2002 s 27(2)(b) (prospectively amended by the Criminal Justice Act 2003 s 41, Sch 3 para 75(1), (3)).

5 Ie under the Proceeds of Crime Act 2002 s 70 (see PARA 453).

6 Proceeds of Crime Act 2002 s 27(2)(c).

7 Proceeds of Crime Act 2002 s 27(3)(a) (amended by the Serious Crime Act 2007 Sch 8 para 14(2), Sch 14).

8 Proceeds of Crime Act 2002 s 27(3)(b).

9 If the court proceeds under the Proceeds of Crime Act 2002 s 6 (ie the provisions relating to the making of a confiscation order: see PARA 391) as applied by s 27, then Pt 2 (ss 6-91) has effect with these modifications:

634 (1) any person the court believes is likely to be affected by an order under s 6 is entitled to appear before the court and make representations (s 27(5)(a));

635 (2) the court must not make an order under s 6 unless the prosecutor has taken reasonable steps to contact the defendant (s 27(5)(b) (amended by the Serious Crime Act 2007 Sch 8 para 14(3), Sch 14));

636 (3) the Proceeds of Crime Act 2002 s 6(9) (see PARA 392 note 3) applies as if the reference to offences mentioned in s 6(2) were a reference to those mentioned in s 27(2) (see the text and notes 1-6) (s 27(5)(c));

637 (4) s 10 (see PARA 395), s 16(4) (see PARA 403), s 17 (see PARA 403) and s 18 (see PARA 404) must be ignored (s 27(5)(d)); and

638 (5) s 19 (see PARA 405), s 20 (see PARA 406) and s 21 (see PARA 407) must be ignored while the defendant is still an absconder (s 27(5)(e)).

10 Proceeds of crime Act 2002 s 27(4). Once the defendant ceases to be an absconder, s 19 (see PARA 405) has effect as if s 19(1)(a) (see PARA 405 head (1)) provided: 'at a time when the first condition in s 27 was satisfied the court did not proceed under s 6': s 27(6). If the court does not believe it is appropriate for it to proceed under s 27, once the defendant ceases to be an absconder s 19 has effect as if s 19(1)(b) (see PARA 405 head (2)) provided: 'there is evidence which was not available to the prosecutor on the relevant date': s 27(7) (amended by the Serious Crime Act 2007 Sch 8 para 14(4), Sch 14).

The Proceeds of Crime Act 2002 s 27 does not have effect where the offence, or any of the offences, mentioned in s 27(2) (see the text and notes 1-6) was committed before 24 March 2003: see the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 3(2); and PARA 390.

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414. Defendant neither convicted nor acquitted.

Where:

- 1387 (1) proceedings for an offence or offences are started¹ against a defendant² but are not concluded³;
- 1388 (2) he absconds⁴; and
- 1389 (3) the period of two years (starting with the day the court believes he absconded) has ended⁵,

and

- 1390 (a) the prosecutor applies to the Crown Court to proceed⁶; and
- 1391 (b) the court believes it is appropriate for it to do so⁷,

the court must proceed under the provisions relating to the making of confiscation orders⁸ in the same way as it must proceed if the two conditions there mentioned⁹ are satisfied¹⁰, subject to a number of modifications¹¹.

1 As to when proceedings for an offence are 'started' see PARA 391 note 1.

2 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

3 Proceeds of Crime Act 2002 s 28(1), (2)(a). If the defendant is acquitted on all counts in proceedings for an offence, the proceedings are concluded when he is acquitted: s 85(3). If the defendant is convicted in proceedings for an offence and the conviction is quashed or the defendant is pardoned before a confiscation order is made, the proceedings are concluded when the conviction is quashed or the defendant is pardoned: s 85(4).

If a confiscation order is made against the defendant in proceedings for an offence (whether the order is made by the Crown Court or the Court of Appeal) the proceedings are concluded: (1) when the order is satisfied or discharged (s 85(5)(a)); or (2) when the order is quashed and there is no further possibility of an appeal against the decision to quash the order (s 85(5)(b)). A confiscation order is 'satisfied' when no amount is due under it: s 87(1). A confiscation order is subject to appeal until there is no further possibility of an appeal on which the order could be varied or quashed and, until a day to be appointed, for this purpose any power to grant leave to appeal out of time must be ignored: s 87(2) (s 87(2) prospectively amended, s 87A prospectively added, by the Policing and Crime Act 2009 Sch 7 paras 66, 69, 70, Sch 8 Pt 4). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

As from a day to be appointed where any provision of the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) refers to there being no further possibility of an appeal against a decision of a court or an appeal on which an order of a court could be varied or quashed any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored: s 87A (as so prospectively added).

If the defendant is convicted in proceedings for an offence but the Crown Court decides not to make a confiscation order against him, the following rules apply:

639 (a) if an application for leave to appeal under s 31(2) (see PARA 417) is refused, the proceedings are concluded when the decision to refuse is made (s 85(6)(a));

640 (b) if the time for applying for leave to appeal under s 31(2) expires without an application being made, the proceedings are concluded when the time expires (s 85(6)(b));

- 641 (c) if on appeal under s 31(2) the Court of Appeal confirms the Crown Court's decision, and an application for leave to appeal under s 33 (see PARA 419) is refused, the proceedings are concluded when the decision to refuse is made (s 85(6)(c));
- 642 (d) if on appeal under s 31(2) the Court of Appeal confirms the Crown Court's decision, and the time for applying for leave to appeal under s 33 expires without an application being made, the proceedings are concluded when the time expires (s 85(6)(d));
- 643 (e) if on appeal under s 31(2) the Court of Appeal confirms the Crown Court's decision, and on appeal under s 33 the Supreme Court confirms the Court of Appeal's decision, the proceedings are concluded when the Supreme Court confirms the decision (s 85(6)(e) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(4)));
- 644 (f) if on appeal under the Proceeds of Crime Act 2002 s 31(2) the Court of Appeal directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision (s 85(6)(f)); and
- 645 (g) if on appeal under s 33 the Supreme Court directs the Crown Court to reconsider the case, and on reconsideration the Crown Court decides not to make a confiscation order against the defendant, the proceedings are concluded when the Crown Court makes that decision (s 85(6)(g) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(4))).

Until a day to be appointed, in applying the Proceeds of Crime Act 2002 s 85(6), any power to extend the time for making an application for leave to appeal must be ignored; as from that day any power to extend the time for giving notice of application for leave to appeal, or for applying for leave to appeal, must be ignored for the purposes of s 85(6): s 85(7) (prospectively substituted by the Policing and Crime Act 2009 Sch 7 paras 66, 68). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment. In applying the Proceeds of Crime Act 2002 s 85(6), the fact that a court may decide on a later occasion to make a confiscation order against the defendant must be ignored: s 85(8). As to the Supreme Court see PARA 53 note 1.

4 Proceeds of Crime Act 2002 s 28(2)(b).

5 Proceeds of Crime Act 2002 s 28(2)(c).

6 Proceeds of Crime Act 2002 s 28(3)(a) (amended by the Serious Crime Act 2007 Sch 8 para 15(2), Sch 14). The text refers to an application to proceed under the Proceeds of Crime Act 2002 s 28.

7 Proceeds of Crime Act 2002 s 28(3)(b).

8 In the Proceeds of Crime Act 2002 s 6 (see PARA 391). As to the meaning of 'confiscation order' see PARA 399 note 1.

9 See PARA 391.

10 Proceeds of Crime Act 2002 s 28(4).

11 Proceeds of Crime Act 2002 s 28(4). If the court proceeds under s 6 as applied by s 28, then Pt 2 (ss 6-91) has effect with the following modifications:

- 646 (1) any person the court believes is likely to be affected by an order under s 6 is entitled to appear before the court and make representations (s 28(5)(a));
- 647 (2) the court must not make an order under s 6 unless the prosecutor has taken reasonable steps to contact the defendant (s 28(5)(b) (amended by the Serious Crime Act 2007 Sch 8 para 15(3), Sch 14));
- 648 (3) the Proceeds of Crime Act 2002 s 6(9) (see PARA 392 note 3) applies as if the reference to offences mentioned in s 6(2) were a reference to those mentioned in s 28(2) (see the text and notes 1-5) (s 28(5)(c));
- 649 (4) s 10 (see PARA 395), s 16(4) (see PARA 403) and ss 17-20 (see PARAS 403-406) must be ignored (s 28(5)(d)); and
- 650 (5) s 21 (see PARA 407) must be ignored while the defendant is still an absconder (s 28(5)(e)).

Once the defendant has ceased to be an absconder s 21 has effect as if references to the date of conviction were references to:

651 (a) the day when proceedings for the offence concerned were started against the defendant (s 28(6)(a)); or

652 (b) if there are two or more offences and proceedings for them were started on different days, the earliest of those days (s 28(6)(b)).

If (i) the court makes an order under s 6 as applied by s 28 (s 28(7)(a)); and (ii) the defendant is later convicted in proceedings before the Crown Court of the offence (or any of the offences) concerned (s 28(7)(b)), then s 6 does not apply so far as that conviction is concerned (s 28(7)).

As to references to the 'offence or offences concerned' see PARA 392 note 3.

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415. Variation of order.

The provisions below apply where:

- 1392 (1) the court makes a confiscation order¹ under the provisions relating to the making of such an order² as applied by the provisions for the making of an order where the defendant³ has been neither convicted nor acquitted⁴;
- 1393 (2) the defendant ceases to be an absconder⁵;
- 1394 (3) he is convicted of an offence (or any of the offences) in respect of which proceedings were not cancelled⁶;
- 1395 (4) he believes that the amount required to be paid was too large (taking the circumstances prevailing when the amount was found for the purposes of the order)⁷; and
- 1396 (5) before the end of the relevant period⁸ he applies⁹ to the Crown Court to consider the evidence on which his belief is based¹⁰.

If (after considering the evidence) the court concludes that the defendant's belief is well founded:

- 1397 (a) it must find the amount which should have been the amount required to be paid (taking the circumstances prevailing when the amount was found for the purposes of the order)¹¹; and
- 1398 (b) it may vary the order by substituting for the amount required to be paid such amount as it believes is just¹².

1 As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

3 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

4 Proceeds of Crime Act 2002 s 29(1)(a). The provisions for the making of a confiscation order where the defendant has been neither convicted nor acquitted are those set out in s 28 (see PARA 414).

5 Proceeds of Crime Act 2002 s 29(1)(b).

6 Proceeds of Crime Act 2002 s 29(1)(c). The reference in the text to a conviction for an offence (or any offence) in respect of which proceedings were not cancelled is a reference to a conviction under s 28(2)(a) (see PARA 414).

7 Proceeds of Crime Act 2002 s 29(1)(d).

8 The 'relevant period' is the period of 28 days starting with: (1) the date on which the defendant was convicted of the offence mentioned in the Proceeds of Crime Act 2002 s 28(2)(a) (see PARA 414) (s 29(3)(a)); or (2) if there are two or more offences and the convictions were on different dates, the date of the latest (s 29(3)(b)). However, in a case where s 28(2)(a) applies to more than one offence the court must not make an order under these provisions unless it is satisfied that there is no possibility of any further proceedings being taken or continued in relation to any such offence in respect of which the defendant has not been convicted: s 29(4).

9 The application must be in writing and supported by a witness statement which must give details of: (1) the confiscation order made against an absconder under the Proceeds of Crime Act 2002 s 6 as applied by s 28

(see PARA 414); (2) the circumstances in which the defendant ceased to be an absconder; (3) the defendant's conviction of the offence or offences concerned; and (4) the reason why he believes the amount required to be paid under the confiscation order was too large: CrimPR 58.7(1), (2).

The application and witness statement must be lodged with the Crown Court: CrimPR 58.7(3). The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 58.7(4).

10 Proceeds of Crime Act 2002 s 29(1)(e).

11 Proceeds of Crime Act 2002 s 29(2)(a).

12 Proceeds of Crime Act 2002 s 29(2)(b).

UPDATE

415-416 Variation of order, Discharge of order

CrimPR 58.7, 58.8 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.7, 58.8.

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416. Discharge of order.

If:

- 1399 (1) the court makes a confiscation order¹ in respect of a defendant² who has neither been convicted nor acquitted³;
- 1400 (2) the defendant is later tried for the offence or offences concerned and acquitted on all counts⁴; and
- 1401 (3) he applies⁵ to the Crown Court to discharge the confiscation order⁶,

the court must discharge the order⁷.

If:

- 1402 (a) the court makes a confiscation order in respect of a defendant who has neither been convicted nor acquitted⁸;
- 1403 (b) the defendant ceases to be an absconder⁹;
- 1404 (c) the defendant is not later tried for the offence or offences concerned and acquitted on all counts¹⁰; and
- 1405 (d) the defendant applies to the Crown Court to discharge the confiscation order¹¹,

the court may discharge the order if it finds that: (i) there has been undue delay in continuing the proceedings¹² in respect of which he absconded¹³; or (ii) the prosecutor does not intend to proceed with the prosecution¹⁴.

If the court discharges a confiscation order under these provisions it may make such a consequential or incidental order as it believes appropriate¹⁵.

1 As to the meaning of 'confiscation order' see PARA 399 note 1.

2 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

3 Proceeds of Crime Act 2002 s 30(1)(a). The provisions for the making of a confiscation order where the defendant has been neither convicted nor acquitted are those set out in s 28 (see PARA 414).

4 Proceeds of Crime Act 2002 s 30(1)(b).

5 The application must be in writing and supported by a witness statement which must give details of: (1) the confiscation order made under the Proceeds of Crime Act 2002 s 28 (see PARA 414); (2) the date on which the defendant ceased to be an absconder; (3) the acquittal of the defendant if he has been acquitted of the offence; (4) if the defendant has not been acquitted of the offence concerned: (a) the date on which the defendant ceased to be an absconder; (b) the date on which the proceedings taken against the defendant were instituted and a summary of steps taken in the proceedings since then; and (c) any indication given by the prosecutor that he does not intend to proceed against the defendant: CrimPR 58.8(1), (2).

The application and witness statement must be lodged with the Crown Court: CrimPR 58.8(3). The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 58.8(4).

If the Crown Court orders the discharge of the confiscation order, the court must serve notice on the magistrates' court responsible for enforcing the order: CrimPR 58.8(5).

6 Proceeds of Crime Act 2002 s 30(1)(c).

7 Proceeds of Crime Act 2002 s 30(2).

8 Proceeds of Crime Act 2002 s 30(3)(a).

9 Proceeds of Crime Act 2002 s 30(3)(b).

10 Proceeds of Crime Act 2002 s 30(3)(c).

11 Proceeds of Crime Act 2002 s 30(3)(d).

12 In the proceedings mentioned in the Proceeds of Crime Act 2002 s 28(2) (see PARA 414).

13 Proceeds of Crime Act 2002 s 30(4)(a).

14 Proceeds of Crime Act 2002 s 30(4)(b).

15 Proceeds of Crime Act 2002 s 30(5).

UPDATE

415-416 Variation of order, Discharge of order

CrimPR 58.7, 58.8 now Criminal Procedure Rules 2010, SI 2010/60, rr 58.7, 58.8.

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E. APPEALS BY PROSECUTOR

417. Appeals by the prosecutor.

With specified exceptions¹, if the Crown Court makes a confiscation order² the prosecutor may appeal to the Court of Appeal in respect of the order³.

With specified exceptions⁴, if the Crown Court decides not to make a confiscation order the prosecutor may appeal to the Court of Appeal against the decision⁵.

1 The provisions of the Proceeds of Crime Act 2002 s 31(1), (2) (see the text and notes 2-5) do not apply to an order or decision under s 19 (see PARA 405), s 20 (see PARA 406), s 27 (see PARA 413) or s 28 (see PARA 414): Proceeds of Crime Act 2002 s 31(3).

2 As to the meaning of 'confiscation order' see PARA 399 note 1.

3 Proceeds of Crime Act 2002 s 31(1). As to appeal by a defendant against the making of a confiscation order see PARA 419.

An appeal to the Court of Appeal under Pt 2 (ss 6-91) lies only with the leave of that court: s 89(1). Subject to rules of court made under the Senior Courts Act 1981 s 53(1) (distribution of business between civil and criminal divisions: see **COURTS** vol 10 (Reissue) PARAS 639-640), the criminal division of the Court of Appeal is the division: (1) to which an appeal to that court under Pt 2 is to lie (s 89(2)(a) (amended by the Constitutional Reform Act 2005 Sch 11 para 1)); and (2) which is to exercise that court's jurisdiction under the Proceeds of Crime Act 2002 Pt 2 (s 89(2)(b)). As to the Senior Courts Act 1981 see PARA 36 note 18.

In relation to appeals to the Court of Appeal under the Proceeds of Crime Act 2002 Pt 2, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications): Proceeds of Crime Act 2002 s 89(3). Pursuant to this power, the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, SI 2003/82, has been made. Inter alia, this order requires that notice of application for leave to appeal must be given within 28 days from the date of the decision appealed against, in the case of an appeal under the Proceeds of Crime Act 2002 s 31 (see the text and notes 1, 2), or 14 days in the case of a decision under s 43 (see PARA 426) or s 65 (see PARA 447): Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, SI 2003/82, art 3(2). For other procedural rules see CrimPR 71, 72.

A confiscation order under the Proceeds of Crime Act 2002 Pt 2 is a sentence for the purposes of an appeal against sentence under the Criminal Appeal Act 1968, as is an order varying a confiscation order made under the Proceeds of Crime Act 2002 Pt 2 if the varying order is made under s 21 (see PARA 407), s 22 (see PARA 408) or s 29 (see PARA 415) (but not otherwise): see the Criminal Appeal Act 1968 s 50(1)(ca), (cb) (added by the Proceeds of Crime Act 2002 Sch 11 para 4(3)).

4 See note 1.

5 Proceeds of Crime Act 2002 s 31(2).

UPDATE

417 Appeals by the prosecutor

NOTE 3--CrimPR 71, 72 now Criminal Procedure Rules 2010, SI 2010/60, Pts 71, 72.

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418. Court of Appeal's powers on appeal by the prosecutor.

On an appeal by the prosecutor in respect of a confiscation order¹ the Court of Appeal may confirm, quash or vary the order².

On an appeal by the prosecutor against a decision not to make a confiscation order³ the Court of Appeal may confirm the decision, or if it believes that the decision was wrong it may:

- 1406 (1) itself proceed under the provisions relating to the making of a confiscation order⁴; or
- 1407 (2) direct the Crown Court to proceed afresh under those provisions⁵.

If a court so makes or varies a confiscation order or makes or varies a confiscation order in pursuance of such a direction, it must:

- 1408 (a) have regard to any fine imposed on the defendant⁶ in respect of the offence (or any of the offences) concerned⁷;
- 1409 (b) have regard to an order involving payment by the defendant, other than a compensation order⁸, a forfeiture order⁹, or a deprivation order¹⁰, which has been made against the defendant in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property¹¹ held¹² by the defendant¹³.

If the Court of Appeal proceeds under the provisions relating to the making of a confiscation order or the Crown Court proceeds afresh under them in pursuance of a direction, the relevant provisions apply with modifications¹⁴.

1 Ie an appeal under the Proceeds of Crime Act 2002 s 31(1) (see PARA 417). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Proceeds of Crime Act 2002 s 32(1).

3 Ie an appeal under the Proceeds of Crime Act 2002 s 31(2) (see PARA 417).

4 Proceeds of Crime Act 2002 s 32(2)(a). As to the provisions relating to the making of a confiscation order see s 6; and PARA 391. In proceeding, the court must ignore the two conditions set out in s 6 (see PARA 391): s 32(2)(a).

5 Proceeds of Crime Act 2002 s 32(2)(b). In proceeding afresh pursuant to these provisions the Crown Court must comply with any directions the Court of Appeal may make: s 32(3).

6 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

7 Proceeds of Crime Act 2002 s 32(4)(a). As to references to the 'offence or offences concerned' see PARA 392 note 3.

8 Ie an order falling within the Proceeds of Crime Act 2002 s 13(3)(a) (see PARA 400). A 'compensation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375).

9 le an order falling within the Proceeds of Crime Act 2002 s 13(3)(b) or s 13(3)(d) (see PARA 400). A 'forfeiture order' is an order under the Misuse of Drugs Act 1971 s 27 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283) or the Terrorism Act 2000 s 23 (see PARA 482).

10 le an order falling within the Proceeds of Crime Act 2002 s 13(3)(c) (see PARA 400). A 'deprivation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see PARA 481).

11 As to when property is 'free' see PARA 397 note 7.

12 le for the purposes of the Proceeds of Crime Act 2002 s 9 (see PARA 397). As to when property is 'held' by a person see PARA 391 note 13.

13 Proceeds of Crime Act 2002 s 32(4)(b).

14 See the Proceeds of Crime Act 2002 s 32(5). If the court has already sentenced the defendant for the offence (or any of the offences) concerned, s 6 (see PARA 391) has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned: s 32(6). As to the meaning of 'criminal conduct' see PARA 391 note 13; and as to the meaning of 'particular criminal conduct' see PARA 391 note 14.

If a compensation order has been made against the defendant in respect of the offence (or any of the offences) concerned under the Powers of Criminal Courts (Sentencing) Act 2000 s 130, the court must have regard to it (Proceeds of Crime Act 2002 s 32(7)(a)) and the provisions of s 13(5), (6) (see PARA 400) do not apply (s 32(7)(b)).

Section 8(2) (see PARA 394) does not apply, and the rules applying instead are that the court must:

653 (1) take account of conduct occurring before the relevant date (s 32(8)(a));

654 (2) take account of property obtained before that date (s 32(8)(b));

655 (3) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date (s 32(8)(c)).

The relevant date is the date on which the Crown Court decided not to make a confiscation order: s 32(11). As to the meaning of 'property', as to when property is 'obtained' by a person, and as to references to property obtained in connection with conduct, see PARA 391 note 13.

In s 10 (see PARA 395):

656 (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date (s 32(9)(a));

657 (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date (s 32(9)(b));

658 (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date (s 32(9)(c)).

Section 26 (see PARA 412) applies as it applies in the circumstances mentioned in s 26(1): s 32(10).

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419. Appeal to the Supreme Court.

An appeal lies to the Supreme Court¹ from a decision of the Court of Appeal on an appeal by the prosecutor in respect of a confiscation order². Such an appeal³ lies at the instance of the defendant⁴ or the prosecutor⁵.

On an appeal from a decision of the Court of Appeal to confirm, vary or make a confiscation order the Supreme Court may confirm, quash or vary the order⁶.

On an appeal from a decision of the Court of Appeal to confirm the decision of the Crown Court not to make a confiscation order or from a decision of the Court of Appeal to quash a confiscation order the Supreme Court may confirm the decision⁷ or direct the Crown Court to proceed afresh under the provisions relating to the making of a confiscation order⁸ if it believes the decision was wrong⁹.

If a court varies a confiscation order under these provisions or makes a confiscation order in pursuance of a direction under them it must:

- 1410 (a) have regard to any fine imposed on the defendant in respect of the offence (or any of the offences) concerned¹⁰;
- 1411 (b) have regard to an order involving payment by the defendant, other than a compensation order¹¹, a forfeiture order¹², or a deprivation order¹³, which has been made against the defendant in respect of the offence (or any of the offences) concerned, unless the order has already been taken into account by a court in deciding what is the free property¹⁴ held¹⁵ by the defendant¹⁶.

If the Crown Court proceeds afresh under the provisions relating to the making of a confiscation order in pursuance of a direction by the Supreme Court, the relevant provisions apply with modifications¹⁷.

1 As to the Supreme Court see PARA 53 note 1. As to such appeals see the Proceeds of Crime Act 2002 (Appeals under Part 2) Order 2003, SI 2003/82, art 11. The Criminal Appeal Act 1968 s 33(3) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966) does not prevent an appeal to the Supreme Court under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91): s 90(1).

2 Proceeds of Crime Act 2002 s 33(1) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(2)). The appeal referred to in the text is an appeal under the Proceeds of Crime Act 2002 s 31 (see PARA 417). As to the meaning of 'confiscation order' see PARA 399 note 1.

3 Ie under the Proceeds of Crime Act 2002 s 33.

4 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

5 Proceeds of Crime Act 2002 s 33(2)(a) (amended by the Serious Crime Act 2007 Sch 8 para 17(a), Sch 14).

6 Proceeds of Crime Act 2002 s 33(3) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(2)).

7 Proceeds of Crime Act 2002 s 33(4)(a) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(2)).

8 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

9 Proceeds of Crime Act 2002 s 33(4)(b) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(2)). In proceeding afresh in pursuance of these provisions the Crown Court must comply with any directions the Supreme Courts may make: Proceeds of Crime Act 2002 s 33(5) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(2)).

10 Proceeds of Crime Act 2002 s 33(6)(a). As to references to the 'offence or offences concerned' see PARA 392 note 3.

11 Is an order falling within the Proceeds of Crime Act 2002 s 13(3)(a) (see PARA 400). A 'compensation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375).

12 Is an order falling within the Proceeds of Crime Act 2002 s 13(3)(b) or s 13(3)(d) (see PARA 400). A 'forfeiture order' is an order under the Misuse of Drugs Act 1971 s 27 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283) or the Terrorism Act 2000 ss 23, 23A (see PARA 482).

13 Is an order falling within the Proceeds of Crime Act 2002 s 13(3)(c) (see PARA 400). A 'deprivation order' is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see PARA 481).

14 As to when property is 'free' see PARA 397 note 7.

15 Is for the purposes of the Proceeds of Crime Act 2002 s 9 (see PARA 397). As to when property is 'held' by a person see PARA 391 note 13.

16 Proceeds of Crime Act 2002 s 33(6)(b).

17 Proceeds of Crime Act 2002 s 33(7). If a court has already sentenced the defendant for the offence (or any of the offences) concerned, s 6 (see PARA 391) has effect as if his particular criminal conduct included conduct which constitutes offences which the court has taken into consideration in deciding his sentence for the offence or offences concerned: s 33(8). As to the meaning of 'criminal conduct' see PARA 391 note 13; and as to the meaning of 'particular criminal conduct' see PARA 391 note 14.

If a compensation order has been made against the defendant in respect of the offence (or any of the offences) concerned under the Powers of Criminal Courts (Sentencing) Act 2000 s 130, the court must have regard to it (Proceeds of Crime Act 2002 s 33(9)(a)) and the provisions of s 13(5), (6) (see PARA 400) do not apply (s 33(9)(b)).

Section 8(2) (see PARA 394) does not apply, and the rules applying instead are that the court must:

659 (1) take account of conduct occurring before the relevant date (s 33(10)(a));

660 (2) take account of property obtained before that date (s 33(10)(b));

661 (3) take account of property obtained on or after that date if it was obtained as a result of or in connection with conduct occurring before that date (s 33(10)(c)).

The relevant date is either the date on which the Crown Court made a confiscation order (in the case where the Crown Court made a confiscation order which was quashed by the Court of Appeal) (s 33(13)(a)) or the date on which the Crown Court decided not to make a confiscation order (in any other case) (s 33(13)(b)). As to the meaning of 'property', as to when property is 'obtained' by a person, and as to references to property obtained in connection with conduct, see PARA 391 note 13.

In s 10 (see PARA 395):

662 (a) the first and second assumptions do not apply with regard to property first held by the defendant on or after the relevant date (s 33(11)(a));

663 (b) the third assumption does not apply with regard to expenditure incurred by him on or after that date (s 33(11)(b));

664 (c) the fourth assumption does not apply with regard to property obtained (or assumed to have been obtained) by him on or after that date (s 33(11)(c)).

Section 26 (see PARA 412) applies as it applies in the circumstances mentioned in s 26(1): s 33(12).

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F. ENFORCEMENT

420. Enforcement of confiscation orders as fines.

Where a court makes a confiscation order¹ the statutory provisions relating to the functions of courts as to fines and enforcing fines² apply as if the amount ordered to be paid were a fine imposed on the defendant³ by the court making the confiscation order⁴.

1 Proceeds of Crime Act 2002 s 35(1)(a) (amended by the Serious Crime Act 2007 Sch 8 para 19(2), Sch 14). As to the meaning of 'confiscation order' see PARA 399 note 1.

2 See the Powers of Criminal Courts (Sentencing) Act 2000 ss 139(2)-(4), (9), 140(1)-(4) (see PARAS 159-160).

3 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

4 Proceeds of Crime Act 2002 s 35(2). In the application of the Magistrates' Courts Act 1980 Pt 3 (ss 75-96A) (see **MAGISTRATES** vol 29(2) (Reissue) PARA 852 et seq) to an amount payable under a confiscation order: (1) s 75 (power to dispense with immediate payment: see **MAGISTRATES** vol 29(2) (Reissue) PARA 853) is for these purposes ignored (Proceeds of Crime Act 2002 s 35(3)(a)); (2) such an amount is not a sum adjudged to be paid by a conviction for the purposes of the Magistrates' Courts Act 1980 s 81 (enforcement of fines imposed on young offenders: see **MAGISTRATES** vol 29(2) (Reissue) PARA 870) or a fine for the purposes of s 85 (remission of fines: see **MAGISTRATES** vol 29(2) (Reissue) PARA 862) (Proceeds of Crime Act 2002 s 35(3)(b)); and (3) the Magistrates' Courts Act 1980 s 87(3) (inquiry into means: see **MAGISTRATES** vol 29(2) (Reissue) PARA 869) is for these purposes ignored (Proceeds of Crime Act 2002 s 35(3)(c)).

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421. Provisions about imprisonment or detention.

Where:

1412 (1) a warrant committing the defendant¹ to prison or detention is issued for a default in payment of an amount ordered to be paid under a confiscation order² in respect of an offence or offences³; and

1413 (2) at the time the warrant is issued the defendant is liable to serve a term of custody in respect of the offence (or any of the offences)⁴,

the term of imprisonment or of detention⁵ to be served in default of payment of the amount does not begin to run until after the term mentioned in head (2) above⁶.

If the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect so far as any other method of enforcement is concerned⁷.

1 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

2 As to the meaning of 'confiscation order' see PARA 399 note 1.

3 Proceeds of Crime Act 2002 s 38(1)(a).

4 Proceeds of Crime Act 2002 s 38(1)(b).

5 I.e. detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 108 (prospectively repealed) (detention of persons aged 18-20 for default: see PARA 11).

6 Proceeds of Crime Act 2002 s 38(2). The reference in s 38(2) to the term of custody the defendant is liable to serve in respect of the offence (or any of the offences) is a reference to the term of imprisonment, or detention in a young offender institution, which he is liable to serve in respect of the offence (or any of the offences): s 38(3). For these purposes, consecutive terms and terms which are wholly or partly concurrent must be treated as a single term and the following must be ignored:

665 (1) any sentence suspended under the Criminal Justice Act 2003 s 189(1) (see PARA 110) which has not taken effect at the time the warrant is issued (Proceeds of Crime Act 2002 s 38(4)(a) (amended by the Criminal Justice Act 2003 s 304, Sch 32 para 141));

666 (2) in the case of a sentence of imprisonment passed with an order under the Criminal Law Act 1977 s 47(1) (repealed) any part of the sentence which the defendant has not at that time been required to serve in prison (Proceeds of Crime Act 2002 s 38(4)(b)); and

667 (3) any term of imprisonment or detention fixed under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (term to be served in default of payment of fine etc: see PARA 159) for which a warrant committing the defendant to prison or detention has not been issued at that time (Proceeds of Crime Act 2002 s 38(4)(c)).

7 Proceeds of Crime Act 2002 s 38(5).

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422. Reconsideration etc: variation of prison term.

Where:

- 1414 (1) a court varies¹ a confiscation order²;
- 1415 (2) the effect of the variation is to vary the maximum period applicable³ in relation to the order⁴; and
- 1416 (3) the result is that that maximum period is less than the term of imprisonment or detention fixed⁵ in respect of the order⁶,

the court must fix⁷ a reduced term of imprisonment or detention in respect of the confiscation order in place of the term previously fixed⁸.

Where heads (1) and (2) above apply but head (3) above does not⁹, the court may amend the term of imprisonment or detention fixed¹⁰ in respect of the confiscation order¹¹.

If the effect of the provisions¹² on unpaid interest sums is to increase the maximum period applicable¹³ in relation to a confiscation order, the Crown Court (on the application of the prosecutor¹⁴) may amend the term of imprisonment or detention fixed¹⁵ in respect of the order¹⁶.

1 Ie under the Proceeds of Crime Act 2002 s 21 (see PARA 407), s 22 (see PARA 408), s 23 (see PARA 409), s 29 (see PARA 415), s 32 (see PARA 418) or s 33 (see PARA 419).

2 Proceeds of Crime Act 2002 s 39(1)(a). As to the meaning of 'confiscation order' see PARA 399 note 1.

3 Ie the period applicable under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(4) (see PARA 159).

4 Proceeds of Crime Act 2002 s 39(1)(b).

5 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (see PARA 159).

6 Proceeds of Crime Act 2002 s 39(1)(c).

7 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (see PARA 159).

8 Proceeds of Crime Act 2002 s 39(2).

9 Proceeds of Crime Act 2002 s 39(3).

10 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (see PARA 159).

11 Proceeds of Crime Act 2002 s 39(4).

12 Ie the Proceeds of Crime Act 2002 s 12 (see PARA 399).

13 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(4) (see PARA 159).

14 The application must be made in writing and give details of: (1) the name and address of the defendant; (2) the confiscation order; (3) the grounds for the application; and (4) the enforcement measures taken, if any: CrimPR 58.9(1), (2). On receipt of the application, the court must: (a) at once, send to the defendant and the magistrates' court responsible for enforcing the order, a copy of the application; and (b) fix a time, date and place for the hearing and notify the applicant and the defendant of that time, date and place: CrimPR 58.9(3). If the Crown Court makes an order increasing the term of imprisonment in default, the court must, at once, send a

copy of the order to: (i) the applicant; (ii) the defendant; (iii) where the defendant is in custody at the time of the making of the order, the person having custody of the defendant; and (iv) if the Director has not been appointed as the enforcement authority under the Proceeds of Crime Act 2002 s 34, the magistrates' court responsible for enforcing the order: CrimPR 58.9(4).

15 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 139(2) (see PARA 159).

16 Proceeds of Crime Act 2002 s 39(5).

UPDATE

422 Reconsideration etc: variation of prison term

NOTE 14--CrimPR 58.9 now Criminal Procedure Rules 2010, SI 2010/60, r 58.9.

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G. RESTRAINT ORDERS

423. Conditions for exercise of powers etc to make a restraint order.

The Crown Court has powers¹ to make restraint orders, which it may exercise if any of the following five conditions is satisfied².

The first condition is that a criminal investigation³ has been started in England and Wales with regard to an offence⁴, and there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct⁵.

The second condition is that proceedings for an offence have been started⁶ in England and Wales and not concluded⁷, and there is reasonable cause to believe that the defendant⁸ has benefited from his criminal conduct⁹.

The third condition is that:

1417 (1) an application by the prosecutor has been made under the provisions relating to:

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23. (a) the reconsideration of the case (where no confiscation order was made)¹⁰;

24. (b) the reconsideration of benefit (where no such order was made)¹¹;

25. (c) the situation where a defendant, having been convicted before (or committed to) the Crown Court absconds¹²; or

26. (d) the situation where a defendant, who has neither been convicted or acquitted, absconds¹³,

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1418 and not concluded¹⁴, or the court believes that such an application is to be made¹⁵; and

1419 (2) there is reasonable cause to believe that the defendant has benefited from his criminal conduct¹⁶.

The fourth condition is that an application by the prosecutor has been made under the provisions¹⁷ relating to reconsideration of benefit (where a confiscation order has been made) and not concluded¹⁸, or the court believes that such an application is to be made¹⁹, and there is reasonable cause to believe that the court will decide under those provisions that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount (as defined in those provisions)²⁰.

The fifth condition is that an application by the prosecutor has been made under the provisions²¹ relating to reconsideration of the available amount (where a confiscation order has been made) and not concluded, or the court believes that such an application is to be made²², and there is reasonable cause to believe that the court will decide under those provisions that the amount found under the new calculation of the available amount exceeds the relevant amount (as defined in those provisions)²³.

1 le under the Proceeds of Crime Act 2002 s 41 (see PARA 424). The powers conferred on a court by s 41 must be exercised with regard to the matter specified in s 69 (see PARA 441); s 69(1).

2 Proceeds of Crime Act 2002 s 40(1).

3 A 'criminal investigation' is an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence: Proceeds of Crime Act 2002 s 88(2).

4 Proceeds of Crime Act 2002 s 40(2)(a). See *Revenue and Customs Prosecutions Office v Hill* [2005] EWCA Crim 3271, [2005] All ER (D) 296 (Dec). If the first condition is satisfied:

668 (1) references in the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) to the defendant are references to the alleged offender (s 40(9)(a));

669 (2) references in Pt 2 to the prosecutor are references to the person the court believes is to have conduct of any proceedings for the offence (s 40(9)(b)); and

670 (3) s 77(9) (see PARA 398) has effect as if proceedings for the offence had been started against the defendant when the investigation was started (s 40(9)(c)).

5 Proceeds of Crime Act 2002 s 40(2)(b). See note 4. As to the meaning of 'criminal conduct' see PARA 391 note 13. As to when a person benefits from conduct see PARA 394.

6 As to when proceedings for an offence are 'started' see PARA 391 note 1.

7 Proceeds of Crime Act 2002 s 40(3)(a). As to when proceedings for an offence are 'concluded' see PARA 414 note 3. The second condition is not satisfied if the court believes that there has been undue delay in continuing the proceedings (s 40(7)(a)) or that the prosecutor does not intend to proceed (s 40(7)(b)).

8 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

9 Proceeds of Crime Act 2002 s 40(3)(b). See note 7.

10 le under the Proceeds of Crime Act 2002 s 19: see PARA 405.

11 le under the Proceeds of Crime Act 2002 s 20: see PARA 406.

12 le under the Proceeds of Crime Act 2002 s 27: see PARA 413.

13 le under the Proceeds of Crime Act 2002 s 28: see PARA 414.

14 An application under the Proceeds of Crime Act 2002 s 19, s 20, s 27 or s 28 (see the text and notes 11-13) is concluded:

671 (1) in a case where the court decides not to make a confiscation order against the defendant, when it makes the decision (s 86(1)(a));

672 (2) in a case where a confiscation order is made against him as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of appeal against the decision to quash the order (s 86(1)(b));

673 (3) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made (s 86(1)(c)).

As to the meaning of 'confiscation order' see PARA 399 note 1. As to when a confiscation order is 'satisfied' see PARA 414 note 3. As to references to there being no further possibility of an appeal see s 87A; and PARA 414 note 3.

15 Proceeds of Crime Act 2002 s 40(4)(a) (amended by the Serious Crime Act 2007 Sch 8 para 22(2), Sch 14). If an application mentioned in the third, fourth or fifth condition has been made, the condition is not satisfied if the court believes that: (1) there has been undue delay in continuing the application (Proceeds of Crime Act 2002 s 40(8)(a)); or (2) the prosecutor does not intend to proceed (s 40(8)(b) (amended by the Serious Crime Act 2007 Sch 8 para 22(5), Sch 14).

16 Proceeds of Crime Act 2002 s 40(4)(b). See note 15.

17 le the Proceeds of Crime Act 2002 s 21 (see PARA 407).

18 An application under the Proceeds of Crime Act 2002 s 21 (see PARA 407) or s 22 (see PARA 408) is concluded:

674 (1) in a case where the court decides not to vary the confiscation order concerned, when it makes the decision (s 86(2)(a));

675 (2) in a case where the court varies the confiscation order as a result of the application, when the order is satisfied or discharged, or when the order is quashed and there is no further possibility of an appeal against the decision to quash the order (s 86(2)(b));

676 (3) in a case where the application is withdrawn, when the person who made the application notifies the withdrawal to the court to which the application was made (s 86(2)(c)).

19 Proceeds of Crime Act 2002 s 40(5)(a). See note 15.

20 Proceeds of Crime Act 2002 s 40(5)(b). See note 15.

21 In the Proceeds of Crime Act 2002 s 22 (see PARA 408).

22 Proceeds of Crime Act 2002 s 40(6)(a). See note 15.

23 Proceeds of Crime Act 2002 s 40(6)(b). See note 15.

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424. Restraint orders.

If any of the requisite conditions¹ is satisfied, the Crown Court may make an order (a 'restraint order'²) prohibiting any specified person from dealing with³ any realisable property⁴ held by him⁵.

A restraint order may provide that it applies:

- 1420 (1) to all realisable property held by the specified person whether or not the property is described in the order⁶;
- 1421 (2) to realisable property transferred to the specified person after the order is made⁷,

and as from a day to be appointed may include provision authorising the detention of any property to which it applies if the property is seized by an appropriate officer⁸ under a relevant seizure power⁹ or is produced¹⁰ to an appropriate officer¹¹.

A restraint order may be made subject to exceptions, and an exception may in particular:

- 1422 (a) make provision for reasonable living expenses and reasonable legal expenses (other than expenses in connection with proceedings in relation to the offence)¹²;
- 1423 (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation¹³; and
- 1424 (c) be made subject to conditions¹⁴.

Where a court makes a restraint order¹⁵, and the applicant for the order applies to the court so to proceed¹⁶ (whether as part of the application for the restraint order or at any time afterwards)¹⁷, the court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective¹⁸.

The registration Acts¹⁹:

- 1425 (i) apply in relation to restraint orders as they apply in relation to orders which affect land and are made by the court for the purpose of enforcing judgments or recognisances²⁰; and
- 1426 (ii) apply in relation to applications for restraint orders as they apply in relation to other pending land actions²¹.

However, no notice may be entered in the register of title²² in respect of a restraint order²³.

1. ie any of the five conditions under the Proceeds of Crime Act 2002 s 40 (see PARA 423).

2. For the purpose of the Proceeds of Crime Act 2002 a 'restraint order' is an order under s 41: s 88(6)(b).

3. 'Dealing with property' includes removing it from England and Wales: Proceeds of Crime Act 2002 s 41(9).

4 As to the meaning of 'property' see PARA 391 note 13; and as to the meaning of 'realisable property' see PARA 409 note 12.

5 Proceeds of Crime Act 2002 s 41(1). The powers conferred on a court by s 41 must be exercised with regard to the matters specified in s 69 (see PARA 441): s 69(1).

An order made under or for the purposes of s 41(1), s 41(7) (see the text and note 18), s 42(5) (see PARA 425), s 43(3) (see PARA 426) or s 44(3) (see PARA 426) has effect in Scotland or Northern Ireland: see s 443(1)(a)-(c), (3), (4); and see, in relation to Scotland, the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002, SI 2002/3133, arts 2, 8(1); and, in relation to Northern Ireland, see art 13(1). However, proceedings for or with respect to its enforcement or contravention may be taken in Scotland or Northern Ireland only if the order is registered in the Court of Session in Scotland or the High Court for Northern Ireland, as the case may be, in which case that court has the same powers to enforce the order as if it had made it itself: see, in relation to Scotland, arts 8(2), 10, 11; and, in relation to Northern Ireland, see arts 13(2), 15, 16. Evidence purporting to be a copy of the order and certified as such by a proper officer of the court which made the order is, in Scotland, sufficient evidence of the order (art 12(4)) and is admissible in evidence in the High Court of Northern Ireland without further proof (art 17(2)). In relation to an order under s 41(1) see also arts 12(1), 17(1).

There are corresponding provisions for a corresponding order made in Scotland or Northern Ireland to be enforced in England and Wales: see arts 3, 5, 6, 7.

As to when property is 'held' by a person see PARA 391 note 13. In making a restraint order against a prospective defendant to criminal proceedings, a judge is entitled to take into account the statutory assumptions in the Proceeds of Crime Act 2002 s 10 (see PARA 395) in relation to criminal lifestyle and to make an order unlimited in amount: *Re K* [2005] EWCA Crim 619, (2005) Times, 15 March, [2005] All ER (D) 23 (Mar). A restraint order does not affect property for the time being subject to a charge under any of the following repealed or revoked provisions: the Drug Trafficking Offences Act 1986 s 9; the Criminal Justice Act 1988 s 78; the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588 (NI 17), art 14; the Drug Trafficking Act 1994 s 27; and the Proceeds of Crime Act 2002 (Northern Ireland) Order 1996, SI 1996/1299 (NI 9), art 32: see the Proceeds of Crime Act 2002 s 41(8).

Section 41 does not have effect where the power in that provision would otherwise be exercisable by virtue of a condition in s 40(2) or s 40(3) (see PARA 423) being satisfied, and the offence with regard to which a criminal investigation has been started (s 40(2)) or proceedings for which have been started but not concluded (s 40(3)) was committed before 24 March 2003: see the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 5; and PARA 390. As to when proceedings for an offence are 'started' see PARA 391 note 1. As to when proceedings for an offence are 'concluded' see PARA 414 note 3.

Unless the Crown Court directs otherwise, a restraint order made without notice (see PARA 425) has effect until the court makes an order varying or discharging the restraint order: CrimPR 59.2(7).

If a person is adjudged bankrupt in England and Wales:

677 (1) specified property is excluded from his estate for the purposes of the Insolvency Act 1986 Pt 9 (ss 264-371) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 124 et seq) (Proceeds of Crime Act 2002 s 417(2) (ss 417(2), 426(2), 430(2) prospectively substituted, ss 418(2), 426(4), (5), 427(4), 430(5) prospectively amended, ss 418(3)(f), 419(2) (aa), 427(3)(aa) prospectively added, by the Policing and Crime Act 2009 Sch 7 paras 79, 80(1), (2)(a), (3), 81(1), (2)(a), 88(1), (2), (3)(a), 89(1), (2)(a), (3), 92(1), (2), (3)(a): at the date at which this volume states the law no day had been appointed for the coming into force of this substitution)), ie:

12. (a) property for the time being subject to a restraint order which was made under the Proceeds of Crime Act 2002 s 41 (or corresponding Scottish or Northern Irish provisions) before the order adjudging him bankrupt;

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13. (b) any property in respect of which an order under the Proceeds of Crime Act 2002 s 50 (see PARA 439) (or corresponding Scottish or Northern Irish provisions) is in force (s 417(2); and see also s 417(3) (property in Scotland));

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14. (c) as from a day to be appointed, property for the time being detained under or by virtue of s 44A (see PARAS 425, 426), s 47J (see PARA 429), s 47K (see PARA 433), s 47M (see PARA 434) or s 47P (see PARA 434) (or corresponding Scottish or Northern Irish provisions); and

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15. (d) as from a day to be appointed, any property in respect of which an order under s 67A (see PARA 451) (or corresponding Scottish or Northern Irish provisions) is in force;
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- 678 (2) if in the case of a debtor an interim receiver stands at any time appointed under the Insolvency Act 1986 s 286 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 223) and any property of the debtor is then subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order (s 417(4)); and
- 679 (3) the powers conferred on a court by ss 41-67 (see the text and notes 6-18; and PARAS 425-450) and, as from a day to be appointed, ss 67A, 67B (see PARA 451) must not be exercised in relation to:
16. (a) property which is for the time being comprised in the bankrupt's estate for the purposes of the Insolvency Act 1986 Pt 9 (Proceeds of Crime Act 2002 s 418(1), (2) (a), (3)(a) (s 418(2) as so prospectively amended));
- 17
17. (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under the Insolvency Act 1986 s 307, s 308 or s 308A (after-acquired property, tools, tenancies etc: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 392-393, 445-446) (Proceeds of Crime Act 2002 s 418(3)(b));
- 18
18. (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under the Insolvency Act 1986 s 280(2)(c) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 630) (Proceeds of Crime Act 2002 s 418(3)(c));
- 19
19. (d) in a case where a confiscation order has been made under s 6 (see PARA 391), any sums remaining in the hands of a receiver appointed under s 50 (see PARA 439) (or corresponding Scottish or Northern Ireland provisions) after the amount required to be paid under the confiscation order has been fully paid (s 418(3)(d)); and
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20. (e) as from a day to be appointed, in a case where a confiscation order has been made under s 6 (see PARA 391) (or corresponding Scottish or Northern Ireland provisions) any sums remaining in the hands of an appropriate officer after the amount required to be paid under the confiscation order has been fully paid under s 67D(2)(c) (see PARA 451) (or corresponding Scottish or Northern Ireland provisions) (s 418(3)(f) (as so prospectively added)),
- 21
- 680 although nothing in the Insolvency Act 1986 must be taken to restrict (or enable the restriction of) the powers conferred on a court by the Proceeds of Crime Act 2002 ss 41-67 (s 418(4)). As to bankruptcies preceding the Insolvency Act 1986 see also the Proceeds of Crime Act 2002 s 418(5).

If a person who is adjudged bankrupt in England and Wales has made a tainted gift (see PARA 398) (whether directly or indirectly) no order may be made under the Insolvency Act 1986 s 339, s 340 or s 423 (avoidance of certain transactions: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 653 et seq) in respect of the making of the gift at any time when any property of the recipient of the tainted gift is subject to a restraint order under the Proceeds of Crime Act 2002 s 41 (or corresponding Scottish or Northern Ireland provisions) (s 419(1), (2)(a), (4)), or, as from a day to be appointed, such property is detained under or by virtue of s 44A (see PARAS 425, 426), s 47J (see PARA 429), s 47K (see PARA 433), s 47M (see PARA 434), s 47P (see PARA 434) (or corresponding Scottish or Northern Irish provisions) (s 419(2)(aa) (as so prospectively added)), and any order made under the Insolvency Act 1986 s 339, s 340 or s 423 after such an order is discharged must take into account any realisation under the Proceeds of Crime Act 2002 Pt 2 of property held by the recipient of the tainted gift (s 419(3)). As to bankruptcies preceding the Insolvency Act 1986 see also the Proceeds of Crime Act 2002 s 419(5). As to tainted gifts see PARA 398.

If an order for the winding up of a company (or limited liability partnership) which may be wound up under the Insolvency Act 1986 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 438 et seq; **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1308) is made, or it passes a resolution for

its voluntary winding up (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARAS 939 et seq, 1308), the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to:

- 681 (i) property for the time being subject to a restraint order which was made under the Proceeds of Crime Act 2002 s 41 (or corresponding Scottish or Northern Irish provisions) before the order adjudging him bankrupt (s 426(2)(a) (as so prospectively substituted));
- 682 (ii) any property in respect of which an order under the Proceeds of Crime Act 2002 s 50 (see PARA 439) (or corresponding Scottish or Northern Irish provisions) is in force (s 426(2)(b), (c) (as so prospectively substituted));
- 683 (iii) as from a day to be appointed, property for the time being detained under or by virtue of s 44A (see PARAS 425, 426), s 47J (see PARA 429), s 47K (see PARA 433), s 47M (see PARA 434) or s 47P (see PARA 434) (or corresponding Scottish or Northern Irish provisions) (s 426(2)(b) (as so prospectively substituted)); and
- 684 (iv) as from a day to be appointed, any property in respect of which an order under s 67A (see PARA 451) (or corresponding Scottish or Northern Irish provisions) is in force (s 426(2)(d) (as so prospectively substituted));

and the powers conferred on a court by ss 41-67 (and, as from a day to be appointed, s 67B (see PARA 451)) must not be exercised, in relation to any property which is held by the company and in relation to which the functions of the liquidator are exercisable, either so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors or so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property (s 426(4), (5)(a), (6) (s 426(5)(a) amended by the Serious Crime Act 2007 Sch 8 para 78(3); and as so prospectively amended)). However, nothing in the Insolvency Act 1986 may be taken to restrict (or enable the restriction of) the exercise of the powers conferred on a court by the Proceeds of Crime Act 2002 ss 41-67: see s 426(7). The 'relevant time' for these purposes is the time of the passing of the resolution for voluntary winding up (if no order for the winding up of the company has been made) (s 426(9)(a)), or the time of the passing of the resolution for voluntary winding up (if no order for the winding up of the company has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company) (s 426(9)(b)), or the time of the making of the order (if such an order has been made but s 426(9)(b) does not apply) (s 426(9)(c)). If an order for the winding up of a company which may be wound up under the Insolvency Act 1986 is made or it passes a resolution for its voluntary winding up, and it has made a tainted gift (whether directly or indirectly), no order may be made under s 238, s 239 or s 423 (avoidance of certain transactions: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 843 et seq) and no decree may be granted under s 242 or s 243 (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when any property of the recipient of the tainted gift is subject to a restraint order under the Proceeds of Crime Act 2002 s 41 (or corresponding Scottish or Northern Ireland provisions) (s 427(1), (2), (3)(a), (5)) or, as from a day to be appointed, such property is detained under or by virtue of s 44A (see PARAS 425, 426), s 47J (see PARA 429), s 47K (see PARA 433), s 47M (see PARA 434) or s 47P (see PARA 434) (or corresponding Scottish or Northern Irish provisions) (s 427(3)(aa) (as so prospectively added)); and any order made under the Insolvency Act 1986 s 238, s 239 or s 423 or decree granted under s 242 or s 243, or otherwise, after a restraint order is discharged must take into account any realisation under the Proceeds of Crime Act 2002 Pt 2 of property held by the recipient of the tainted gift (s 427(4) (as so prospectively amended)). As to windings-up preceding the Insolvency Act 1986 see also the Proceeds of Crime Act 2002 ss 426(10), 427(6).

For Scottish and Northern Irish provisions corresponding to the provisions of ss 417-419, 426, 427 see ss 420-425, 429.

If a company which may be wound up under the Insolvency Act 1986 holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to:

- 685 (A) property for the time being subject to a restraint order which was made under the Proceeds of Crime Act 2002 s 41 (or corresponding Scottish or Northern Irish provisions) before the order adjudging him bankrupt (s 430(2)(a) (as so prospectively substituted));
- 686 (B) any property in respect of which an order under the Proceeds of Crime Act 2002 s 50 (see PARA 439) (or corresponding Scottish or Northern Irish provisions) is in force (s 430(2)(b), (c) (as so prospectively substituted));
- 687 (C) as from a day to be appointed, property for the time being detained under or by virtue of s 44A (see PARAS 425, 426), s 47J (see PARA 429), s 47K (see PARA 433), s 47M (see PARA 434) or s 47P (see PARA 434) (or corresponding Scottish or Northern Irish provisions) (s 430(2)(b) (as so prospectively substituted)); and

688 (D) as from a day to be appointed, any property in respect of which an order under s 67A (see PARA 451) (or corresponding Scottish or Northern Irish provisions) is in force (s 430(2)(d) (as so prospectively substituted)),

and the powers conferred on a court by ss 41-67 (and, as from a day to be appointed, s 67B (see PARA 451)) must not be exercised, in relation to any property which is held by the company and in relation to which the functions of the receiver are exercisable, either so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company's creditors or so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property (s 430(4), (5)(a), (6) (s 430(5)(a) amended by the Serious Crime Act 2007 Sch 8 para 82(2), Sch 14; and as so prospectively amended)). However, nothing in the Insolvency Act 1986 may be taken to restrict (or enable the restriction of) the exercise of the powers conferred on a court by the Proceeds of Crime Act 2002 ss 41-67: see s 430(7).

In ss 426, 427, 430, 'company' includes a limited liability partnership which may be wound up under the Insolvency Act 1986 (Proceeds of Crime Act 2002 s 431(1)); and a reference in ss 426, 427, 430 to a company passing a resolution for its voluntary winding up is to be construed in relation to a limited liability partnership as a reference to the partnership making a determination for its voluntary winding up (s 431(2)).

Whereas a confiscation order constitutes a final payment, subject to appeal, of what should be taken from the defendant as representing the proceeds of his crime, a restraint order is in contrast pre-emptive and provisional: see *Re Peters* [1988] QB 871, [1988] 3 All ER 46, CA; *Jennings v Crown Prosecution Service* [2005] EWCA Civ 746 at [43], [2005] 4 All ER 391 at [43], [2006] 1 WLR 182 at [43] per Laws LJ (affirmed on other grounds [2008] UKHL 29, [2008] 1 AC 1046, [2008] 4 All ER 113). As to the duty of an applicant for a restraint order to set out his reasons for fearing a risk of dissipation of the respondent's assets (ie the reason for seeking the order) and to make a full and frank disclosure see *Jennings v Crown Prosecution Service* at [61]-[64] per Longmore LJ.

Provision is also made by Order in Council for prohibitions to be imposed on dealing with property which is the subject of an external request (ie a request by an overseas authority to prohibit dealing with relevant property which is identified in the request) and for the realisation of property for the purpose of giving effect to an external order (ie an order which is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct and is for the recovery of specified property or a specified sum of money): see the Proceeds of Crime Act 2002 ss 444, 447(1) (s 444 amended by the Serious Organised Crime and Police Act 2005 s 108); and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181 (amended by SI 2008/302). See also CrimPR 57.15.

If a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order made under the Proceeds of Crime Act 2002 s 41, and at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property (s 432(1)(a)), he is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence (s 432(2)) (without prejudice to the generality of any provision of the Insolvency Act 1986 Act or any other Act or Order which confers protection from liability on him: Proceeds of Crime Act 2002 s 432(4)), and he has a lien on the property or the proceeds of its sale for such of his expenses as were incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal (s 432(3)(a)) and for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings (s 432(3)(b)). For the purposes of s 432, a person 'acts as an insolvency practitioner' if he so acts within the meaning given by the Insolvency Act 1986 s 388 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 43) (Proceeds of Crime Act 2002 s 433(1), (2)), subject to the following: (i) the expression 'person acting as an insolvency practitioner' includes the official receiver acting as receiver or manager of the property concerned (s 433(3)); and (ii) in applying the Insolvency Act 1986 s 388, the reference in s 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a trustee in sequestration and s 388(5) (which includes provision that nothing in s 388 applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored (Proceeds of Crime Act 2002 s 433(4)).

6 Proceeds of Crime Act 2002 s 41(2)(a).

7 Proceeds of Crime Act 2002 s 41(2)(b).

8 'Appropriate officer' means an accredited financial investigator (cf PARA 429), a constable, an officer of Revenue and Customs, a member of staff of SOCA and a member of staff of the relevant director (within the meaning of the Proceeds of Crime Act 2002 s 352(5A) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 810)); s 41A(3) (s 41A prospectively added by the Policing and Crime Act 2009 s 52(1), (2)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

9 'Relevant seizure power' means a power to seize property which is conferred by or by virtue of the Proceeds of Crime Act 2002 s 47C (see PARAS 429, 431) or s 352 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**

vol 11(2) (2006 Reissue) PARAS 810, 811) or under the Police and Criminal Evidence Act 1984 Pt 2 (ss 8-23) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 874 et seq) or Pt 3 (ss 24-32) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 924 et seq) (including as applied by order under s 114(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 856): Proceeds of Crime Act 2002 s 41A(4) (prospectively added: see note 8). The Secretary of State may by order amend the definition of 'relevant seizure power': s 41A(5) (as so prospectively added). At the date at which this volume states the law no such order had been made.

10 In compliance with a production order under the Proceeds of Crime Act 2002 s 345 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 805-806).

11 Proceeds of Crime Act 2002 s 41A(1) (prospectively added: see note 8). Such provision may, in particular, relate to specified property, to property of a specified description or to all property to which the restraint order applies, or may relate to property that has already been seized or produced or to property that may be seized or produced in future: s 41A(2) (as so prospectively added).

12 Proceeds of Crime Act 2002 s 41(3)(a). An exception to a restraint order must not make provision for any legal expenses which: (1) relate to either the offence mentioned in the Proceeds of Crime Act 2002 s 40(2) or (3) (see PARA 423), if the first or second condition (as the case may be) is satisfied (s 41(4)(a), (5)(a)), or the offence (or any of the offences) concerned, if the third, fourth or fifth condition is satisfied (s 41(5)(b)); and (2) are incurred by the defendant or by a recipient of a tainted gift (s 41(4)(b)). A contribution to the Legal Services Commission could not on any reasonable construction be treated as a 'living expense', although a contribution to the Commission to institute judicial review proceedings in connection with the offence in which the restraint order was made is a 'legal expense': see *FSA v M* [2009] EWCA Crim 997, [2009] All ER (D) 204 (May) ('living expenses' are 'ordinary, recurrent expenses involved in maintaining the subject . . . in the style of life to which he is reasonably accustomed'). As to references to the 'offence or offences concerned' see PARA 392 note 3. As to the meaning of 'defendant' for these purposes see PARA 391 note 1. Section 41(4) prevents an exception being made under s 41(3) for legal expenses for proceedings in connection with a restraint order: *Re S (Restraint Order)* [2004] EWCA Crim 2374, [2005] 1 WLR 1338, [2005] 1 Cr App Rep 239. See also *R v AP; R v U Ltd* [2007] EWCA Crim 3128, [2008] 1 Cr App Rep 497, sub nom *R v P (the Ministry of Justice and the Home Office intervening)* *R v A Company* [2007] All ER (D) 333 (Dec); *Revenue and Customs Prosecutions Office v Allad* [2008] EWCA Crim 1741, [2009] 3 All ER 530, sub nom *Irwin Mitchell (a firm) v Revenue and Customs Prosecutions Office* [2009] 1 WLR 1079.

13 Proceeds of Crime Act 2002 s 41(3)(b).

14 Proceeds of Crime Act 2002 s 41(3)(c).

15 Proceeds of Crime Act 2002 s 41(6)(a).

16 In under the Proceeds of Crime Act 2002 s 41(7) (see the text and note 18).

17 Proceeds of Crime Act 2002 s 41(6)(b).

18 Proceeds of Crime Act 2002 s 41(7). The Crown Court must not require the applicant for a restraint order to give any undertaking relating to damages sustained as a result of the restraint order by a person who is prohibited from dealing with realisable property by the restraint order: CrimPR 59.2(4).

The Crown Court may require the applicant for a restraint order to give an undertaking to pay the reasonable expenses of any person, other than a person who is prohibited from dealing with realisable property by the restraint order, which are incurred in complying with the restraint order: CrimPR 59.2(5).

A restraint order must include a statement that disobedience of the order, either by a person to whom the order is addressed, or by another person, may be contempt of court and the order must include details of the possible consequences of his being held in contempt of court: CrimPR 59.2(6).

As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 41(7), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see note 5.

19 In the Land Registration Act 1925 (repealed), the Land Charges Act 1972 (see **LAND CHARGES** vol 26 (2004 Reissue) PARA 601 et seq) and the Land Registration Act 2002 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 801 et seq): Proceeds of Crime Act 2002 s 47(2).

20 Proceeds of Crime Act 2002 s 47(1)(a). The person applying for a restraint order must be treated for the purposes of the Land Registration Act 1925 s 57 (repealed) (inhibitions) as a person interested in relation to any registered land to which the application relates (Proceeds of Crime Act 2002 s 47(4)(a)) or to which a restraint order made in pursuance of the application relates (s 47(4)(b)).

21 Proceeds of Crime Act 2002 s 47(1)(b).

22 le under the Land Registration Act 2002: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 810 et seq.

23 Proceeds of Crime Act 2002 s 47(3).

UPDATE

424-426 Restraint orders ... Appeal to the Court of Appeal and to the Supreme Court

CrimPR Pt 59 now Criminal Procedure Rules 2010, SI 2010/60, Pt 59.

424 Restraint orders

NOTE 5--CrimPR 57.15 now Criminal Procedure Rules 2010, SI 2010/60, r 57.15.

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425. Application, discharge and variation.

A restraint order¹ may be made only on application² by the prosecutor³, or an accredited financial investigator⁴. Such an order may be made on an ex parte application to a judge in chambers⁵.

An application to discharge or vary a restraint order or an order⁶ made to ensure that a restraint order is effective may be made to the Crown Court by the person who applied for the order⁷ or by any person affected by the order⁸. On such an application, the court may discharge the order⁹ or may vary it¹⁰. If the prerequisite condition¹¹ for a restraint order which was satisfied was that proceedings were started¹² or an application was made, the court must discharge the order on the conclusion of the proceedings¹³ or of the application (as the case may be)¹⁴. If the prerequisite condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if, within a reasonable time, proceedings for the offence are not started or the application is not made (as the case may be)¹⁵.

1 As to restraint orders see PARA 424.

2 The application may be made without notice: CrimPR 59.1(1), (2). The application must be in writing and supported by a witness statement which must: (1) give the grounds for the application; (2) to the best of the witness's ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; (3) give the grounds for, and full details of, any application for an ancillary order under the Proceeds of Crime Act 2002 s 41(7) (see PARA 424) for the purposes of ensuring that the restraint order is effective; and (4) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under s 68 (see PARA 452): CrimPR 59.1(3). As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12. As to when property is 'held' by a person see PARA 391 note 13.

The applicant for a restraint order must: (a) serve copies of the restraint order and of the witness statement made in support of the application on the defendant and any person who is prohibited from dealing with realisable property by the restraint order; and (b) notify any person whom the applicant knows to be affected by the restraint order of the terms of the restraint order: CrimPR 59.2(8). As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

3 Proceeds of Crime Act 2002 s 42(1)(a), (2)(a).

4 Proceeds of Crime Act 2002 s 42(2)(c). See s 69; and PARA 441.

5 Proceeds of Crime Act 2002 s 42(1)(b).

6 Ie an order made under the Proceeds of Crime Act 2002 s 41(7) (see PARA 424).

7 Proceeds of Crime Act 2002 s 42(3)(a). Where the applicant for a restraint order makes an application under s 42(3) for variation of a restraint order or any ancillary order made under s 41(7) (see PARA 424) (including where the court has already made a restraint order and the applicant is seeking to vary the order in order to restrain further realisable property), the following provisions apply: CrimPR 59.4(1).

The application may be made without notice if the application is urgent or if there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application: CrimPR 59.4(2).

The application must be in writing and must be supported by a witness statement which must: (1) give the grounds for the application; (2) where the application is for the inclusion of further realisable property in the order, give full details, to the best of the witness's ability, of the realisable property in respect of which the

applicant is seeking the order and specify the person holding that realisable property; and (3) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under the Proceeds of Crime Act 2002 s 68 (see PARA 452): CrimPR 59.4(3).

The application and witness statement must be lodged with the Crown Court: CrimPR 59.4(4).

Except where, under CrimPR 59.4(2), notice of the application is not required to be served, the application and witness statement must be served on any person who is prohibited from dealing with realisable property by the restraint order at least two days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 59.4(5).

If the court makes an order for the variation of a restraint order, the applicant must serve copies of the order and of the witness statement made in support of the application on: (a) the defendant; (b) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the variation); and (c) any other person whom the applicant knows to be affected by the order: CrimPR 59.4(6).

Where the applicant for a restraint order makes an application under the Proceeds of Crime Act 2002 s 42(3) to discharge the order or any ancillary order made under s 41(7) (see PARA 424) the following provisions apply: CrimPR 59.5(1).

The application may be made without notice: CrimPR 59.5(2). The application must be in writing and must state the grounds for the application: CrimPR 59.5(3).

If the court makes an order for the discharge of a restraint order, the applicant must serve copies of the order on: (i) the defendant; (ii) any person who is prohibited from dealing with realisable property by the restraint order (whether before or after the discharge); and (iii) any other person whom the applicant knows to be affected by the order: CrimPR 59.5(4).

8 Proceeds of Crime Act 2002 s 42(3)(b). See note 7.

9 Proceeds of Crime Act 2002 s 42(4), (5)(a). As from a day to be appointed if a restraint order includes provision under s 41A (see PARA 424) authorising the detention of property and the restraint order is discharged under s 42(5) the property may be detained until there is no further possibility of an appeal against the decision to discharge the restraint order or any decision made on an appeal against that decision: s 44A(1), (3) (s 44A prospectively added by the Policing and Crime Act 2009 s 52(1), (3)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment. As to references to there being no further possibility of an appeal see the Proceeds of Crime Act 2002 s 87A; and PARA 414 note 3.

As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 42(5), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 424 note 5.

10 Proceeds of Crime Act 2002 s 42(5)(b). As from a day to be appointed if a restraint order includes provision under s 41A (see PARA 424) authorising the detention of property and the restraint order is varied under s 42(5) so as to omit any such provision, the property may be detained until there is no further possibility of an appeal against the decision to vary the restraint order or any decision made on an appeal against that decision: s 44A(2), (3) (prospectively added: see note 9).

11 Ie under the Proceeds of Crime Act 2002 s 40 (see PARA 423).

12 As to when proceedings for an offence are 'started' see PARA 391 note 1.

13 As to when proceedings for an offence are 'concluded' see PARA 414 note 3.

14 Proceeds of Crime Act 2002 s 42(6).

15 Proceeds of Crime Act 2002 s 42(7).

UPDATE

424-426 Restraint orders ... Appeal to the Court of Appeal and to the Supreme Court

CrimPR Pt 59 now Criminal Procedure Rules 2010, SI 2010/60, Pt 59.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/G. RESTRAINT ORDERS/426. Appeal to the Court of Appeal and to the Supreme Court.

426. Appeal to the Court of Appeal and to the Supreme Court.

If on an application for a restraint order¹ the court decides not to make one, the person who applied for the order may appeal to the Court of Appeal against the decision².

If an application is made³ to the Crown Court for the discharge or variation of a restraint order or an order⁴ made to ensure that a restraint order is effective:

- 1427 (1) the person who applied for the order⁵; or
- 1428 (2) any person affected by the order⁶,

may appeal to the Court of Appeal in respect of the Crown Court's decision on the application⁷.

On such an appeal⁸ the Court of Appeal may confirm the decision⁹ or make such order as it believes is appropriate¹⁰.

At the instance of any person who was a party to the proceedings before the Court of Appeal¹¹, an appeal lies to the Supreme Court¹² from a decision of the Court of Appeal on such an appeal¹³. The Supreme Court may either confirm the decision of the Court of Appeal¹⁴ or make such order as it believes is appropriate¹⁵.

1 As to restraint orders see PARA 424.

2 Proceeds of Crime Act 2002 s 43(1). As to appeals to the Court of Appeal see PARA 417 note 3. Subject to any rules made under s 91 (see PARAS 391, 437), the costs of, and incidental to, all proceedings on an appeal to the criminal division of the Court of Appeal under s 43(1) or (2) (appeals against orders made in restraint proceedings: see the text and notes 3-7) or s 65 (appeals against, or relating to, the making of receivership orders: see PARA 447) are in the discretion of the court: s 89(4) (s 89(4)-(9) added by the Courts Act 2003 s 94 in relation to proceedings on appeal in respect of offences committed or alleged to have been committed on or after 24 March 2003). Such rules may in particular make provision for regulating matters relating to the costs of those proceedings, including prescribing scales of costs to be paid to legal or other representatives: Proceeds of Crime Act 2002 s 89(5) (as so added).

The court has full power to determine by whom and to what extent the costs are to be paid: s 89(6) (as so added). In any proceedings mentioned in s 89(4), the court may disallow or (as the case may be) order the legal or other representative concerned to meet the whole of any wasted costs or such part of them as may be determined in accordance with any rules under s 91: see s 89(7) (as so added). In s 89(7), 'wasted costs' means any costs incurred by a party: (1) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative (s 89(8)(a) (as so added)); or (2) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay (s 89(8)(b) (as so added)). 'Legal or other representative', in relation to a party to proceedings means any person exercising a right of audience or right to conduct litigation on his behalf: s 89(9) (as so added).

For procedural rules relating to appeals under ss 43, 65 (see PARA 447) see CrimPR 71, 73.

3 Ie under the Proceeds of Crime Act 2002 s 42(3) (see PARA 425).

4 Ie under the Proceeds of Crime Act 2002 s 41(7) (see PARA 424).

5 Proceeds of Crime Act 2002 s 43(2)(a).

6 Proceeds of Crime Act 2002 s 43(2)(b).

7 Proceeds of Crime Act 2002 s 43(2). See note 2.

8 le under the Proceeds of Crime Act 2002 s 43(1) or (2).

9 Proceeds of Crime Act 2002 s 43(3)(a). See PARA 441. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 43(3), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 424 note 5.

10 Proceeds of Crime Act 2002 s 43(3)(b). As from a day to be appointed if a restraint order includes provision under s 41A (see PARA 424) authorising the detention of property and the restraint order is discharged under s 43(3)(b), or is varied under s 43(3)(b) so as to omit any such provision, the property may be detained until there is no further possibility of an appeal against the decision to discharge the restraint order or any decision made on an appeal against that decision: s 44A (prospectively added by the Policing and Crime Act 2009 s 52(1), (3)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment. As to references to there being no further possibility of an appeal see the Proceeds of Crime Act 2002 s 87A; and PARA 414 note 3.

As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 42(5), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 424 note 5.

11 Proceeds of Crime Act 2002 s 44(2).

12 As to the Supreme Court see PARA 53 note 1. As to the procedure on such an appeal see PARA 419.

13 Proceeds of Crime Act 2002 s 44(1) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(1), (3)).

14 Proceeds of Crime Act 2002 s 44(3)(a) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(1), (3)). As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 44(3) or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 424 note 5.

15 Proceeds of Crime Act 2002 s 44(3)(b) (amended by the Constitutional Reform Act 2005 Sch 9 para 77(1), (3)). See note 14.

UPDATE

424-426 Restraint orders ... Appeal to the Court of Appeal and to the Supreme Court

CrimPR Pt 59 now Criminal Procedure Rules 2010, SI 2010/60, Pt 59.

426 Appeal to the Court of Appeal and to the Supreme Court

NOTE 2--CrimPR 71, 73 now Criminal Procedure Rules 2010, SI 2010/60, Pts 71, 73.

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427. Hearsay evidence.

Evidence must not be excluded in restraint proceedings¹ on the ground that it is hearsay² (of whatever degree)³. However, the safeguards⁴ which apply under the law of evidence to the admission of hearsay evidence in civil proceedings apply in relation to restraint proceedings as they apply in relation to civil proceedings⁵.

1 Restraint proceedings are proceedings: (1) for a restraint order (see PARA 424) (Proceeds of Crime Act 2002 s 46(3)(a)); (2) for the discharge or variation of a restraint order (see PARA 425) (s 46(3)(b)); and (3) on an appeal under s 43 or s 44 (see PARA 426) (s 46(3)(c)).

2 Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated: Proceeds of Crime Act 2002 s 46(4).

3 Proceeds of Crime Act 2002 s 46(1). As to hearsay evidence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1519 et seq. Nothing in s 46 affects the admissibility of evidence which is admissible apart from s 46: s 46(5). See also s 69; and PARA 441.

4 Ie under the Civil Evidence Act 1995 ss 2-4 (see **CIVIL PROCEDURE** vol 11 (2009) PARAS 811-815).

5 Proceeds of Crime Act 2002 s 46(2).

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428. Restrictions.

Where a court makes a restraint order¹:

1429 (1) no distress may be levied² against any realisable property³ to which the order applies, except with the leave of the Crown Court and subject to any terms the Crown Court may impose⁴; and

1430 (2) if the order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Crown Court and subject to any terms the Crown Court may impose⁵.

If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit⁶.

1 Proceeds of Crime Act 2002 s 58(1). As to restraint orders see PARA 424.

2 And as from a day to be appointed no power to use the procedure in the Tribunals, Courts and Enforcement Act 2007 Sch 12 (taking control of goods) may be exercised: Proceeds of Crime Act 2002 s 58(2) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 para 143). At the date at which this volume states the law no such day had been appointed.

3 As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

4 Proceeds of Crime Act 2002 s 58(2). Applications under s 58(2), s 58(3) (see the text and note 5) and s 59(2), (3) (see PARA 446) for leave of the Crown Court to levy distress against property or exercise a right of forfeiture by peaceable re-entry in relation to a tenancy, in circumstances where the property or tenancy is the subject of a restraint order or a receiver has been appointed in respect of the property or tenancy, must be made in writing to the Crown Court: CrimPR 61.1(1), (2). The application must be served on: (1) the person who applied for the restraint order or the order appointing the receiver; and (2) any receiver appointed in respect of the property or tenancy, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 61.1(3). Applications in restraint proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise: CrimPR 61.3. Restraint proceedings may be heard in chambers: CrimPR 61.3. For further provisions relating to restraint proceedings see CrimPR 61.5-61.22.

5 Proceeds of Crime Act 2002 s 58(3), (4).

6 Proceeds of Crime Act 2002 s 58(5). Before exercising any power conferred by s 58(5), the court must give an opportunity to be heard to: (1) the applicant for the restraint order (s 58(6)(a)); and (2) any receiver appointed in respect of the property under s 48 (see PARA 437) or s 50 (see PARA 439) (s 58(6)(b) (amended by the Serious Crime Act 2007 Sch 8 para 26)).

UPDATE

428 Restrictions

NOTE 4--CrimPR Pt 61 now Criminal Procedure Rules 2010, SI 2010/60, Pt 61.

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H. SEARCH AND SEIZURE OF PROPERTY

429. Power to seize property.

Until a day to be appointed¹ if a restraint order² is in force, a constable³, an accredited financial investigator⁴ or an officer of Revenue and Customs may seize any realisable property⁵ to which it applies to prevent its removal from England and Wales⁶, and property so seized must be dealt with in accordance with the directions of the court which made the order⁷.

As from a day to be appointed⁸ an appropriate officer⁹ may, on being satisfied of the appropriate matters¹⁰, seize any realisable property¹¹ if he has reasonable grounds for suspecting that the property may otherwise be made unavailable for satisfying any confiscation order¹² that has been or may be made against the defendant¹³ or the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person¹⁴. An appropriate officer may exercise this power only if he is satisfied that:

- 1431 (1) a criminal investigation¹⁵ has been started in England and Wales with regard to an indictable offence, a person has been arrested for the offence, proceedings for the offence have not yet been started against the person in England and Wales, there is reasonable cause to believe that the person has benefited from conduct constituting the offence, and a restraint order is not in force in respect of any realisable property¹⁶;
- 1432 (2) a criminal investigation has been started in England and Wales with regard to an indictable offence, a person has been arrested for the offence, proceedings for the offence have not yet been started against the person in England and Wales and a restraint order is in force in respect of any realisable property¹⁷;
- 1433 (3) proceedings for an indictable offence have been started in England and Wales and have not been concluded, there is reasonable cause to believe that the defendant has benefited from conduct constituting the offence and a restraint order is not in force in respect of any realisable property¹⁸;
- 1434 (4) proceedings for an indictable offence have been started in England and Wales and have not been concluded, and a restraint order is in force in respect of any realisable property¹⁹;
- 1435 (5) an application by the prosecutor has been made²⁰ and not concluded, or the officer believes that such an application is to be made, and there is reasonable cause to believe that the defendant has benefited from criminal conduct²¹;
- 1436 (6) an application by the prosecutor has been made²² and not concluded, or the officer believes that such an application is to be made, and there is reasonable cause to believe that the court will decide that the amount found under the new calculation of the defendant's benefit exceeds the relevant amount²³; or
- 1437 (7) an application by the prosecutor has been made²⁴ and not concluded, or the officer believes that such an application is to be made, and there is reasonable cause to believe that the court will decide that the amount found under the new calculation of the available amount exceeds the relevant amount²⁵.

The power to seize property²⁶ may be exercised only with the appropriate approval²⁷ unless in the circumstances it is not practicable to obtain that approval before exercising the power²⁸. If

an appropriate officer seizes property under these provisions²⁹ the property may be detained initially for a period of 48 hours³⁰, although provision is made for the further detention of seized property in specified circumstances³¹.

1 The Proceeds of Crime Act 2002 s 45 (see the text and notes 2-7) is repealed, and ss 47A-47S (see the text and notes 8-31; and PARAS 429-436) are added, by the Policing and Crime Act 2009 s 55(1)-(3), Sch 8 Pt 4), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Ie an order under the Proceeds of Crime Act 2002 s 41: see PARA 424.

3 Ie the holder of the office of constable, whatever his rank in his police force. As to the office of constable see **POLICE** vol 36(1) (2007 Reissue) PARAS 101-105.

4 The reference in the Proceeds of Crime Act 2002 s 45 to an accredited financial investigator is a reference to an accredited financial investigator who falls within a description specified in an order made for the purposes of s 45 by the Secretary of State under s 45(3) (added by the Serious Crime Act 2007 s 78(2); prospectively repealed: see note 1). As to the accreditation and training of an accredited financial investigator see the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009, SI 2009/975 (amended by SI 2009/2707).

5 As to the meaning of 'realisable property' see PARA 409 note 12. As to the meaning of 'property' see PARA 391 note 13.

6 Proceeds of Crime Act 2002 s 45(1) (amended by the Serious Crime Act 2007 s 78(1); and by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7); prospectively repealed (see note 1)).

7 Proceeds of Crime Act 2002 s 45(2) (prospectively repealed: see note 1).

8 See note 1.

9 In the Proceeds of Crime Act 2002 ss 47B-47S 'appropriate officer' means an officer of Revenue and Customs, a constable or an accredited financial investigator (ie an accredited financial investigator who falls within a description specified in an order made for the purposes of that provision by the Secretary of State under s 45(3): Proceeds of Crime Act 2002 s 47A (prospectively added: see note 1). At the date at which this volume states the law no such order had been made.

The power conferred by s 47C (see the text and notes 10-14) is exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that conduct constituting the relevant offence relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904): Proceeds of Crime Act 2002 s 47C(6)(b) (as so prospectively added). 'Relevant offence' means: (1) in a case where the officer is satisfied that the condition set out in s 47B(2), (3), (4) or (5) (see the text and notes 15-19) is met, the offence mentioned in that condition (s 47C(7)(a) (as so prospectively added)); and (2) in a case where the officer is satisfied that any of the other conditions in s 47B (see the text and notes 15-19) is met, the offence (or any of the offences) concerned (s 47C(7)(b) (as so prospectively added)).

10 Ie as mentioned in the Proceeds of Crime Act 2002 s 47B(1) (see the text and notes 15-16).

11 See note 5; and see also the Proceeds of Crime Act 2002 s 47C(2)-(5); and PARA 431.

12 As to the meaning of 'confiscation order' see PARA 399 note 1.

13 Proceeds of Crime Act 2002 s 47C(1)(a) (prospectively added: see note 1).

14 Proceeds of Crime Act 2002 s 47C(1)(b) (prospectively added: see note 1).

15 As to the meaning of 'criminal investigation' see PARA 423 note 3.

16 Proceeds of Crime Act 2002 s 47B(1), (2) (prospectively added: see note 1). In relation to this condition and the condition set out in s 47B(3) (see the text and note 11) references in ss 47C-47S to the defendant are to the person mentioned in the applicable condition (s 47B(11) (as so prospectively added)) and s 77(9) (see PARA 398) has effect as if proceedings for the offence had been started against the defendant when the investigation was started (s 47B(12) (as so prospectively added)). Section 47B(11) is subject to s 47C(5) (see PARA 431): s 47C(5) (as so prospectively added).

17 Proceeds of Crime Act 2002 s 47B(3) (prospectively added: see note 1). As to this condition see note 10.

18 Proceeds of Crime Act 2002 s 47B(4) (prospectively added: see note 1). This condition and the condition set out in s 47B(5) (see the text and note 13) are not met if the officer believes that there has been undue delay in continuing the proceedings or the prosecutor does not intend to proceed: s 47B(9) (as so prospectively added).

19 Proceeds of Crime Act 2002 s 47B(5) (prospectively added: see note 1). As to this condition see note 18.

20 Ie under the Proceeds of Crime Act 2002 s 19, s 20, s 27 or s 28 (see PARAS 405, 406, 413, 414).

21 Proceeds of Crime Act 2002 s 47B(6) (prospectively added: see note 1). If an application mentioned in this condition or the condition set out in s 47B(7) (see the text and notes 16-17) or s 47B(8) (see the text and notes 24-25) has been made the condition is not met if the officer believes that there has been undue delay in continuing the application or the prosecutor does not intend to proceed: s 47B(10) (as so prospectively added).

22 Ie under the Proceeds of Crime Act 2002 s 21 (see PARA 407).

23 Proceeds of Crime Act 2002 s 47B(7) (prospectively added: see note 1). As to this condition see note 21.

24 Ie under the Proceeds of Crime Act 2002 s 22 (see PARA 408).

25 Proceeds of Crime Act 2002 s 47B(8) (prospectively added: see note 1). As to this condition see note 21.

26 Ie the power conferred by the Proceeds of Crime Act 2002 s 47C.

27 Ie approval under the Proceeds of Crime Act 2002 s 47G (prospectively added: see note 1), which provides that for the purposes of s 47C (see the text and notes 7-14) and ss 47D-47F (see PARA 430), in relation to the exercise of a power by an appropriate officer, means the approval of a justice of the peace or (if that is not practicable in any case) the approval of a senior officer: s 47G(1), (2) (as so prospectively added). By virtue of s 47G(3) (as so prospectively added) 'senior officer' means: (1) in relation to the exercise of a power by an officer of Revenue and Customs, an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that of a senior police officer; (2) in relation to the exercise of a power by a constable, a senior police officer; and (3) in relation to the exercise of a power by an accredited financial investigator, an accredited financial investigator who falls within a description specified in an order made for this purpose by the Secretary of State under s 453. A 'senior police officer' means a police officer of at least the rank of inspector: s 47G(4) (as so prospectively added).

28 Proceeds of Crime Act 2002 s 47C(6)(a) (prospectively added: see note 1).

29 Ie under the Proceeds of Crime Act 2002 s 47C.

30 Proceeds of Crime Act 2002 s 47J(1), (2) (prospectively added: see note 1). In calculating a period of 48 hours for this purpose no account is to be taken of any Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1437) in England and Wales: ss 47H(7), 47J(3) (as so prospectively added).

31 See the Proceeds of Crime Act 2002 ss 47K-47Q; and PARAS 433-434.

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430. Powers of search.

As from a day to be appointed¹ if an appropriate officer² is lawfully on any premises³ he may search the premises for the purpose of finding any property⁴ which he has reasonable grounds for suspecting may be found there⁵ and, if found there, he intends⁶ to seize⁷. An appropriate officer may also:

- 1438 (1) if he has reasonable grounds for suspecting that a person is carrying property that may be so seized and so far as he thinks it necessary or expedient for the purpose of seizing the property, require the person to permit a search of any article with the person⁸ and to permit a search of the person⁹; and
- 1439 (2) if he has reasonable grounds for suspecting that a vehicle contains property that may be so seized and it appears to him that the vehicle is under the control of a person who is in or in the vicinity of the vehicle, and so far as he thinks it necessary or expedient for the purpose of seizing the property, require the person to permit entry to the vehicle¹⁰ and to permit a search of the vehicle¹¹.

These powers¹² may be exercised only with the appropriate approval¹³ unless, in the circumstances, it is not practicable to obtain that approval before exercising the power¹⁴, and the powers relating to the searching of vehicles¹⁵ are exercisable only if the vehicle is in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or in any other place to which at that time people have ready access but which is not a dwelling¹⁶.

1 The Proceeds of Crime Act 2002 ss 47A-47S (see the text and notes 2-16; and PARAS 429, 431-436) are added by the Policing and Crime Act 2009 s 55(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'appropriate officer' see PARA 429 note 9.

3 As to the meaning of 'premises' see the Police and Criminal Evidence Act 1984 s 23; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 872 (definition applied by the Proceeds of Crime Act 2002 s 47D(3) (prospectively added: see note 1)).

4 As to the meaning of 'property' see PARA 391 note 13; and see also the Proceeds of Crime Act 2002 s 47C(2)-(5); and PARA 431.

5 Proceeds of Crime Act 2002 s 47D(1)(a) (prospectively added: see note 1).

6 Ie under the Proceeds of Crime Act 2002 s 47C (see PARA 429).

7 Proceeds of Crime Act 2002 s 47D(1)(b) (prospectively added: see note 1).

8 Proceeds of Crime Act 2002 s 47E(1), (2)(a) (prospectively added: see note 1). An officer exercising a power under s 47E(2) may detain the person for so long as is necessary for its exercise: s 47E(3) (as so prospectively added).

9 Proceeds of Crime Act 2002 s 47E(2)(b) (prospectively added: see note 1). See note 8. These provisions do not require a person to submit to an intimate search or strip search (within the meaning of the Customs and

Excise Management Act 1979 s 164: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1151); Proceeds of Crime Act 2002 s 47E(5) (as so prospectively added).

10 Proceeds of Crime Act 2002 s 47F(1), (4)(a) (prospectively added: see note 1). An officer exercising a power under s 47F(4) may detain the vehicle for so long as is necessary for its exercise: s 47F(5) (as so prospectively added).

11 Proceeds of Crime Act 2002 s 47F(4)(b) (prospectively added: see note 1). See note 10.

12 Ie the powers conferred by the Proceeds of Crime Act 2002 ss 47D-47F (see the text and notes 1-11).

13 Ie the appropriate approval under the Proceeds of Crime Act 2002 s 47G (see PARA 429 note 27).

14 Proceeds of Crime Act 2002 ss 47D(2), 47E(4), 47F(6) (prospectively added: see note 1).

15 Ie the powers conferred by the Proceeds of Crime Act 2002 s 47F (see the text and notes 10-14, 16).

16 Proceeds of Crime Act 2002 s 47F(2) (prospectively added: see note 1). If the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the officer may exercise the powers under s 47F(4) only if the officer has reasonable grounds for believing that the person does not reside in the dwelling and that the vehicle is not in the place in question with the express or implied permission of another who resides in the dwelling: s 47F(3) (as so prospectively added).

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431. Exempt property.

An appropriate officer¹ may not seize cash² or exempt property³ (ie such tools, books, vehicles and other items of equipment as are necessary to the defendant⁴ for use personally in the defendant's employment, business or vocation and such clothing, bedding, furniture, household equipment, provisions or other things as are necessary for satisfying the basic domestic needs of the defendant and the defendant's family⁵) under the provisions relating to the power to seize property⁶.

1 As to the meaning of 'appropriate officer' see PARA 429 note 9.

2 'Cash means notes and coins in any currency, postal orders, cheques of any kind (including travellers' cheques), bankers' drafts, bearer bonds and bearer shares, found at any place in the United Kingdom; and also includes any kind of monetary instrument which is found at any place in the United Kingdom if the instrument is specified by the Secretary of State by an order made after consultation with the Scottish Ministers: Proceeds of Crime Act 2002 ss 47C(3), 289(6), (7) (ss 47A-47S (see the text and notes 3-6; and PARAS 429-430, 432-436) prospectively added by the Policing and Crime Act 2009 s 55(1), (2): at the date at which this volume states the law no day had been appointed for the coming into force of this amendment).

3 As to the meaning of 'property' see PARA 391 note 13.

4 In relation to realisable property which is free property (see PARA 397 note 7) held by the recipient of a tainted gift, references in the Proceeds of Crime Act 2002 s 47C(4) to the defendant are to be read as references to the recipient of that gift: s 47C(5) (prospectively added: see note 2). As to the meaning of 'realisable property' see PARA 409 note 12.

5 Proceeds of Crime Act 2002 s 47C(4) (prospectively added: see note 2).

6 Ie under the Proceeds of Crime Act 2002 s 47C (see PARA 429): s 47C(2)-(5) (prospectively added: see note 2).

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432. Exercise of powers without judicial approval.

As from a day to be appointed¹ an appropriate officer² must give a written report to the appointed person³ in any case where:

- 1440 (1) the officer seizes property⁴ without the approval of a justice of the peace⁵ and any of the property seized is not detained for more than 48 hours⁶; or
- 1441 (2) the officer exercises any of the search powers⁷ without the approval of a justice of the peace⁸ and no property is⁹ seized¹⁰.

A report under these provisions must give particulars of the circumstances which led the officer to believe that the powers were exercisable¹¹ and it was not practicable to obtain the approval of a justice of the peace¹².

1 The Proceeds of Crime Act 2002 ss 47A-47S (see the text and notes 2-12; and PARAS 429-431, 433-436) are added by the Policing and Crime Act 2009 s 55(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'appropriate officer' see PARA 429 note 9.

3 I.e. a person appointed for these purposes by the Secretary of State: Proceeds of Crime Act 2002 s 47H(4) (prospectively added: see note 1). The appointed person must not be a person employed under or for the purposes of a government department; and the terms and conditions of appointment, including any remuneration or expenses to be paid, are to be determined by the Secretary of State: s 47H(5) (as so prospectively added). At the date at which this volume states the law no person had been appointed for this purpose.

As soon as possible after the end of each financial year the appointed person must prepare a report for that year (s 47I(1) (as so prospectively added)), which must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by ss 47C-47F (see PARAS 429-430) are being exercised in cases where the officer who exercised them is required to give a report under s 47H (s 47I(3) (as so prospectively added)) and may make any recommendations the appointed person considers appropriate (s 47I(4) (as so prospectively added)). The appointed person must send a copy of the report to the Secretary of State who must publish any report so received and lay a copy before Parliament, although before so acting the Secretary of State must exclude from the report any matter which the Secretary of State thinks is likely to prejudice any criminal investigation or criminal proceedings: s 47I(5)-(7) (as so prospectively added). If the Secretary of State excludes any matter from the report the Secretary of State must publish and lay before Parliament the whole of the report as soon as he thinks that the excluded matter is no longer likely to prejudice any criminal investigation or criminal proceedings: s 47I(8) (as so prospectively added).

For this purpose 'financial year' means the period beginning with the day on which the Policing and Crime Act 2009 s 55 (see note 1) comes into force and ending with the next 31 March (which is the first financial year), and each subsequent period of 12 months beginning with 1 April: s 47I(2) (as so prospectively added). At the date at which this volume states the law no such day had been appointed.

4 I.e. under the Proceeds of Crime Act 2002 s 47C: see PARA 429. As to the meaning of 'property' see PARA 391 note 13; and see also the Proceeds of Crime Act 2002 s 47C(2)-(5); and PARA 431.

5 Proceeds of Crime Act 2002 ss 47H(1)(a) (prospectively added: see note 1).

6 Proceeds of Crime Act 2002 ss 47H(1)(b) (prospectively added: see note 1). In calculating a period of 48 hours for this purpose no account is to be taken of any Saturday or Sunday, Christmas Day, Good Friday or any

day that is a bank holiday under the Banking and Financial Dealings Act 1971 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1437) in England and Wales: s 47H(6), (7) (as so prospectively added).

7 le the powers conferred by the Proceeds of Crime Act 2002 ss 47D-47F: see PARA 430.

8 Proceeds of Crime Act 2002 ss 47H(2)(a) (prospectively added: see note 1).

9 See note 4.

10 Proceeds of Crime Act 2002 ss 47H(2)(b) (prospectively added: see note 1).

11 Proceeds of Crime Act 2002 ss 47H(3)(a) (prospectively added: see note 1).

12 Proceeds of Crime Act 2002 ss 47H(3)(b) (prospectively added: see note 1).

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433. Further detention of seized property pending the making or variation of a restraint order.

As from a day to be appointed¹ detained² property³ may be detained until the following applications are determined or otherwise disposed of⁴:

- 1442 (1) an application⁵ for a restraint order⁶ which includes provision⁷ authorising detention of the property⁸, where the property is detained⁹ and no restraint order is in force in respect of it¹⁰; and
- 1443 (2) an application¹¹ for the order to be varied so as to include provision¹² authorising detention of the property¹³, where the property is detained¹⁴, a restraint order is in force in respect of it, and the order does not include provision¹⁵ authorising the detention of the property¹⁶.

If either such application is made¹⁷ and is refused, the property may be detained until there is no further possibility of an appeal against the decision to refuse the application¹⁸ or any decision made on an appeal against that decision¹⁹.

1 The Proceeds of Crime Act 2002 ss 47A-47S (see the text and notes 2-19; and PARAS 429-432, 434-436) are added by the Policing and Crime Act 2009 s 55(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Ie detained under the Proceeds of Crime Act 2002 s 47J: see PARA 429.

3 As to the meaning of 'property' see PARA 391 note 13; and see also the Proceeds of Crime Act 2002 s 47C(2)-(5); and PARA 431.

4 Proceeds of Crime Act 2002 ss 47K(2), 47L(2) (prospectively added: see note 1).

5 Ie an application made within the period mentioned in the Proceeds of Crime Act 2002 s 47J (see PARA 429). For the purposes of the Proceeds of Crime Act 2002 ss 47K(2) the reference to the period mentioned in s 47J includes that period as extended by any order under s 47M (see PARA 434): s 47K(4) (prospectively added: see note 1).

6 Ie an order under the Proceeds of Crime Act 2002 s 41: see PARA 424.

7 Ie under the Proceeds of Crime Act 2002 s 41A: see PARA 424.

8 Proceeds of Crime Act 2002 s 47K(2) (prospectively added: see note 1).

9 See note 2.

10 Proceeds of Crime Act 2002 s 47K(1) (prospectively added: see note 1).

11 See note 5.

12 See note 7.

13 Proceeds of Crime Act 2002 s 47L(2) (prospectively added: see note 1).

14 See note 2.

- 15 See note 7.
- 16 Proceeds of Crime Act 2002 s 47L(1) (prospectively added: see note 1).
- 17 le within the period mentioned in the Proceeds of Crime Act 2002 s 47J (see PARA 429); and see note 6.
- 18 Proceeds of Crime Act 2002 ss 47K(4)(a), 47L(3)(a) (prospectively added: see note 1). As to references to there being no further possibility of an appeal see s 87A; and PARA 414 note 3.
- 19 Proceeds of Crime Act 2002 ss 47K(4)(b), 47L(3)(b) (prospectively added: see note 1).

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434. Further detention of seized property in other cases.

As from a day to be appointed¹ if property² is detained³, no restraint order⁴ is in force in respect of the property, and no application has been made for a restraint order which includes provision⁵ authorising detention of the property⁶, a magistrates' court may by order⁷ extend the period for which the property or any part⁸ of it may be so detained if satisfied that:

- 1444 (1) any of the conditions for exercising the power to seize property⁹ is met¹⁰;
- 1445 (2) the property or part is realisable property¹¹ other than exempt property¹²;
and
- 1446 (3) there are reasonable grounds for suspecting that the property may otherwise be made unavailable for satisfying any confiscation order¹³ that has been or may be made against the defendant¹⁴ or the value of the property may otherwise be diminished as a result of conduct by the defendant or any other person¹⁵.

An application for such an order may be made by the Commissioners for Her Majesty's Revenue and Customs, a constable, an accredited financial investigator or the prosecutor¹⁶. Those persons may also apply for variation or discharge of such an order¹⁷, as may any person affected by it¹⁸, and on such an application the court must discharge the order if an applicable condition is met¹⁹. Such an order will lapse if a restraint order is made in respect of the property to which it relates²⁰. The persons who may apply for an order²¹ may appeal to the Crown Court against a decision not to make an order, and the persons who may apply for the variation or discharge of an order²² may appeal to the Crown Court in respect of a decision not to discharge or vary an order²³, and provision is made for the continuing detention of property pending such an appeal²⁴.

Evidence must not be excluded in detention order proceedings²⁵ on the ground that it is hearsay (of whatever degree)²⁶.

1 The Proceeds of Crime Act 2002 ss 47A-47S (see the text and notes 2-26; and PARAS 429-433, 435-436) are added by the Policing and Crime Act 2009 s 55(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'property' see PARA 391 note 13; and see also the Proceeds of Crime Act 2002 s 47C(2)-(5); and PARA 431.

3 Is detained under the Proceeds of Crime Act 2002 s 47J: see PARA 429.

4 Is an order under the Proceeds of Crime Act 2002 s 41: see PARA 424.

5 Is under the Proceeds of Crime Act 2002 s 41A: see PARA 424.

6 Proceeds of Crime Act 2002 s 47M(1) (prospectively added: see note 1).

7 An order under these provisions must provide for notice to be given to persons affected by it: Proceeds of Crime Act 2002 s 47M(5) (prospectively added: see note 1).

8 In the Proceeds of Crime Act 2002 s 47M 'part' includes portion: s 47M(6) (prospectively added: see note 1).

9 le the conditions set out in the Proceeds of Crime Act 2002 s 47B: see PARA 429. For this purpose references in s 47B to the officer are to be read as references to the court: s 47M(2)(a) (prospectively added: see note 1).

10 Proceeds of Crime Act 2002 s 47M(2)(a) (prospectively added: see note 1).

11 As to the meaning of 'realisable property' see PARA 409 note 12.

12 Proceeds of Crime Act 2002 s 47M(2)(b) (prospectively added: see note 1). 'Exempt property' means exempt property within the meaning of s 47C(4) (see PARA 431): s 47M(2)(b) (as so prospectively added).

13 As to the meaning of 'confiscation order' see PARA 399 note 1.

14 Proceeds of Crime Act 2002 s 47M(2)(c)(i) (prospectively added: see note 1).

15 Proceeds of Crime Act 2002 s 47M(2)(c)(ii) (prospectively added: see note 1).

16 Proceeds of Crime Act 2002 s 47M(3) (prospectively added: see note 1). If the property was seized in reliance on the first or second condition in s 47B the 'prosecutor' means a person who is to have conduct of any proceedings for the offence: s 47M(4) (as so prospectively added).

17 Proceeds of Crime Act 2002 s 47N(2)(a) (prospectively added: see note 1).

18 Proceeds of Crime Act 2002 s 47N(2)(b) (prospectively added: see note 1).

19 Proceeds of Crime Act 2002 s 47N(1), (3) (prospectively added: see note 1). The applicable conditions are:

689 (1) that the order was made on the ground that the first or second condition in s 47B (see s 47B(2), (3); and PARA 429) was met but proceedings for the offence mentioned in that condition have not been started within a reasonable time (s 47N(3)(a) (as so prospectively added));

690 (2) that the order was made on the ground that the third or fourth condition in s 47B (see s 47B(4), (5); and PARA 429) was met but proceedings for the offence mentioned in that condition have now been concluded (s 47N(3)(b) (as so prospectively added)); and

691 (3) that the order was made on the ground that the fifth, sixth or seventh condition in s 47B (see s 47B(6)-(8); and PARA 429) was met but the application mentioned in that condition has now been concluded or, as the case may be, has not been made within a reasonable time (s 47N(3)(c) (as so prospectively added)).

20 Proceeds of Crime Act 2002 s 47N(4) (prospectively added: see note 1). Provision authorising detention of the property may have been included in the restraint order by virtue of s 41A: s 47N(4) (as so prospectively added).

21 See the text and note 16.

22 See the text and notes 17-18.

23 Proceeds of Crime Act 2002 s 47O (prospectively added: see note 1).

24 See the Proceeds of Crime Act 2002 s 47P (prospectively added: see note 1), which provides that where an application for an order under s 47M (see the text and notes 1-16) is made within the period mentioned in s 47J (see PARA 429) and the application is refused, or where an order is made under s 47M extending the period for which property may be detained under s 47J and the order is discharged or varied so that detention of the property is no longer authorised by virtue of the order, the property may be detained until there is no further possibility of an appeal against the decision to refuse the application or discharge or vary the order (as the case may be). As to references to there being no further possibility of an appeal see s 87A; and PARA 414 note 3.

25 Detention order proceedings are proceedings for an order under the Proceeds of Crime Act 2002 s 47M (see the text and notes 1-16), for the discharge or variation of such an order (see the text and notes 17-19) or on an appeal under s 47O (see the text and notes 20-23): s 47Q(3) (prospectively added: see note 1). The Civil Evidence Act 1995 ss 2-4 (see **CIVIL PROCEDURE** vol 11 (2009) PARAS 811-815) apply in relation to detention order proceedings as they apply in relation to civil proceedings: Proceeds of Crime Act 2002 s 47Q(2) (as so prospectively added).

26 Proceeds of Crime Act 2002 s 47Q(1) (prospectively added: see note 1). For this purpose hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated: s 47Q(4) (as so prospectively added). Nothing in s 47Q affects the admissibility of evidence which is admissible apart from s 47Q: s 47Q(5) (as so prospectively added).

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435. Release of property.

As from a day to be appointed¹ any property² which has been seized³ by an appropriate officer⁴ and is detained⁵ must be released if at any time an appropriate officer decides that the detention condition is no longer met⁶, although property is not hereby required to be released if there is a power to detain it otherwise⁷ and these provisions do not affect the operation of any power or duty to release property that arises apart therefrom⁸.

1 The Proceeds of Crime Act 2002 ss 47A-47S (see the text and notes 2-8; and PARAS 429-434, 436) are added by the Policing and Crime Act 2009 s 55(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'property' see PARA 391 note 13; and see also the Proceeds of Crime Act 2002 s 47C(2)-(5); and PARA 431.

3 Ie under the Proceeds of Crime Act 2002 s 47C: see PARA 429.

4 As to the meaning of 'appropriate officer' see PARA 429 note 9.

5 Ie under or by virtue of any of the Proceeds of Crime Act 2002 ss 47J-47M, 47P: see PARAS 429, 433, 434.

6 Proceeds of Crime Act 2002 s 47R(1), (2) (prospectively added: see note 1). The detention condition is met for so long as any of the conditions in s 47B (see PARA 429) is met and there are reasonable grounds for the suspicion mentioned in s 47C(1) (see PARA 429): s 47R(3) (as so prospectively added).

7 Proceeds of Crime Act 2002 s 47R(4) (prospectively added: see note 1), providing that nothing in s 47R requires property to be released if there is a power to detain it otherwise than under or by virtue of ss 47J-47M, 47P.

8 Proceeds of Crime Act 2002 s 47R(5) (prospectively added: see note 1).

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436. Codes of practice.

As from a day to be appointed¹ the Secretary of State must make a code of practice in connection with the carrying out by appropriate officers² of their functions³ relating to the seizure of property and the searching of persons and premises⁴, the carrying out by senior officers⁵ of their functions⁶ relating to the approval of seizures and searches⁷, and the detention of property⁸ generally⁹. Where the Secretary of State proposes to issue a code of practice he must publish a draft¹⁰ and consider any representations made about it¹¹, and if he thinks it appropriate must modify the draft in the light of any such representations¹². The Secretary of State must lay a draft of the code before Parliament¹³ and when he has done so may bring it into operation by order¹⁴. He may also revise the whole or any part of the code and issue the code as revised¹⁵.

A failure by a person to comply with a provision of the code does not of itself make the person liable to criminal or civil proceedings¹⁶; however the code is admissible in evidence in criminal or civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant¹⁷.

1 The Proceeds of Crime Act 2002 ss 47A-47S (see the text and notes 2-17; and PARAS 429-435) are added by the Policing and Crime Act 2009 s 55(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'appropriate officer' see PARA 429 note 9.

3 I.e. the functions conferred by the Proceeds of Crime Act 2002 ss 47C-47H: see PARAS 429-432.

4 Proceeds of Crime Act 2002 s 47S(1)(a) (prospectively added: see note 1).

5 As to the meaning of 'senior officer' see PARA 429 note 27.

6 I.e. the functions conferred by the Proceeds of Crime Act 2002 s 47G: see PARA 429.

7 Proceeds of Crime Act 2002 s 47S(1)(b) (prospectively added: see note 1).

8 I.e. under or by virtue of the Proceeds of Crime Act 2002 ss 41A, 44A, 47J-47P: see PARAS 424, 429, 433, 434.

9 Proceeds of Crime Act 2002 s 47S(1)(c) (prospectively added: see note 1).

10 Proceeds of Crime Act 2002 s 47S(2)(a) (prospectively added: see note 1).

11 Proceeds of Crime Act 2002 s 47S(2)(b) (prospectively added: see note 1).

12 Proceeds of Crime Act 2002 s 47S(2)(c) (prospectively added: see note 1).

13 Proceeds of Crime Act 2002 s 47S(3) (prospectively added: see note 1).

14 Proceeds of Crime Act 2002 s 47S(4) (prospectively added: see note 1).

15 Proceeds of Crime Act 2002 s 47S(5) (prospectively added: see note 1). Where the Secretary of State proposes to issue a revised code and s 47S(2)-(4) (see the text and notes 10-14) apply to such a revised code as they apply to the original code: s 47S(5) (as so prospectively added).

16 Proceeds of Crime Act 2002 s 47S(6) (prospectively added: see note 1).

- 17 Proceeds of Crime Act 2002 s 47S(7) (prospectively added: see note 1).

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I. MANAGEMENT RECEIVERS AND ENFORCEMENT RECEIVERS

437. Appointment of management receivers.

Where the Crown Court makes a restraint order¹, and the applicant for the order applies to the court to appoint a receiver in respect of any realisable property² (whether as part of the application for the restraint order or at any time afterwards)³, the Crown Court may appoint a receiver in respect of any realisable property to which the restraint order applies⁴.

1 Proceeds of Crime Act 2002 s 48(1)(a). As to restraint orders see PARA 424.

2 As to the meaning of 'property' see PARA 391 note 13; and as to the meaning of 'realisable property' see PARA 409 note 12.

3 Proceeds of Crime Act 2002 s 48(1)(b).

4 Proceeds of Crime Act 2002 s 48(2). As to an appeal against the making of, or refusal to make, an order under s 48, see PARA 447. An order made under or for the purposes of s 48(2), s 49 (see PARA 438), s 50(2) (see PARA 439), s 51 (see PARA 440), s 54(3) (see PARA 448), s 62(4) (see PARA 443), s 63(2) (see PARA 444), s 64(2), (6) (see PARA 445), s 65(6) (see PARA 447) or s 66(3) (see PARA 447) has effect, and functions of a receiver under Pt 2 (ss 6-91) are exercisable, in Scotland or Northern Ireland: see s 443(2)-(4); and see, in relation to Scotland, the Proceeds of Crime Act 2002 (Enforcement in different parts of the United Kingdom) Order 2002, SI 2002/3133, arts 2, 9(1); and, in relation to Northern Ireland, see art 14(1). However, proceedings for or with respect to the enforcement or contravention of the order may be taken in Scotland or Northern Ireland only if the order is registered in the Court of Session in Scotland or the High Court for Northern Ireland, as the case may be, in which case that court has the same powers to enforce the order as if it had made it itself: see, in relation to Scotland, arts 9(2), 10, 11; and, in relation to Northern Ireland, see arts 14(2), 15, 16. Evidence purporting to be a copy of the order and certified as such by a proper officer of the court which made the order is, in Scotland, sufficient evidence of the order (art 12(4)) and is admissible in evidence in the High Court of Northern Ireland without further proof (art 17(2)).

There are corresponding provisions for a corresponding order made in Scotland or Northern Ireland to be enforced in England and Wales: see arts 4, 5, 6, 7(1). See also CrimPR 57.4-57.6.

In relation to receivers appointed under the Proceeds of Crime Act 2002 Pt 2, Criminal Procedure Rules may make provision corresponding to provision in Civil Procedure Rules: s 91(b) (amended by the Courts Act 2003 s 109(1), Sch 8 para 410). The following provisions apply to an application for the appointment of a management receiver under the Proceeds of Crime Act 2002 s 48 or an enforcement receiver under s 50(1) (see PARA 439): CrimPR 60.1(1).

The application may be made without notice if: (1) the application is joined with an application for a restraint order under CrimPR 59.1 (see PARA 425); (2) the application is urgent; or (3) there are reasonable grounds for believing that giving notice would cause the dissipation of realisable property which is the subject of the application: CrimPR 60.1(2).

The application must be in writing and must be supported by a witness statement which must: (a) give the grounds for the application; (b) give full details of the proposed receiver; (c) to the best of the witness's ability, give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; (d) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under the Proceeds of Crime Act 2002 s 68 (see PARA 452); and (e) if the proposed receiver is not a member of staff of the Crown Prosecution Service or the Revenue and Customs Prosecutions Office and the applicant is asking the court to allow the receiver to act without giving security, or before he has given security or satisfied the court that he has security in place, explain the reasons why that is necessary: CrimPR 60.1(3).

Where the application is for the appointment of an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant: CrimPR 60.1(4).

The application and witness statement must be lodged with the Crown Court: CrimPR 60.1(5). Except where, under CrimPR 60.1(2), notice of the application is not required to be served, the application and witness statement must be lodged with the Crown Court and served on the defendant, any person who holds realisable property to which the application relates, and any other person whom the applicant knows to be affected by the application, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 60.1(6).

If the court makes an order for the appointment of a receiver, the applicant must serve copies of the order and of the witness statement made in support of the application on the defendant, any person who holds realisable property to which the order applies, and any other person whom the applicant knows to be affected by the order: CrimPR 60.1(7).

As to when property is 'held' by a person see PARA 391 note 13. As to security, remuneration, accounts and non-compliance with procedural rules and directions see CrimPR 60.5-60.8. The Taxes Management Act 1970 ss 75, 77 (receivers: income tax and capital gains tax: see **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 418; **INCOME TAXATION** vol 23(2) (Reissue) PARA 1247) do not apply in relation to a receiver appointed under the Proceeds of Crime Act 2002 s 48 or s 50: s 488, Sch 10 para 1(a) (amended by the Serious Crime Act 2007 Sch 8 para 84(a)). See also the Proceeds of Crime Act 2002 s 69; and PARA 441.

If a person is adjudged bankrupt in England and Wales the powers of a receiver appointed under s 48 or s 50 (see PARA 439) must not be exercised in relation to (Proceeds of Crime Act 2002 s 418(1), (2)(a) (s 418(2)(a) amended by the Serious Crime Act 2007 Sch 8 para 70(2)(a))):

- 692 (i) property which is for the time being comprised in the bankrupt's estate for the purposes of the Insolvency Act 1986 Pt 9 (ss 264-371) (Proceeds of Crime Act 2002 s 418(3)(a));
- 693 (ii) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under the Insolvency Act 1986 s 307, s 308 or s 308A (after-acquired property, tools, tenancies etc: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 392-393, 445-446) (Proceeds of Crime Act 2002 s 418(3)(b));
- 694 (iii) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under the Insolvency Act 1986 s 280(2)(c) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 630) (Proceeds of Crime Act 2002 s 418(3)(c));
- 695 (iv) in a case where a confiscation order has been made under s 6 (see PARA 391), any sums remaining in the hands of a receiver appointed under s 50 (see PARA 439) (or corresponding Scottish or Northern Ireland provisions) after the amount required to be paid under the confiscation order has been fully paid (s 418(3)(d) (amended by the Serious Crime Act 2007 Sch 8 para 70(3)); and
- 696 (v) as from a day to be appointed, in a case where a confiscation order has been made under the Proceeds of Crime Act 2002 s 6 (see PARA 391) (or corresponding Scottish or Northern Ireland provisions) any sums remaining in the hands of an appropriate officer after the amount required to be paid under the confiscation order has been fully paid under s 67D(2)(c) (see PARA 451) (or corresponding Scottish or Northern Ireland provisions) (s 418(3)(f) (prospectively added by the Policing and Crime Act 2009 Sch 7 para 80(1), (3): at the date at which this volume states the law no day had been appointed for the coming into force of this amendment)),

although nothing in the Insolvency Act 1986 may be taken to restrict (or enable the restriction of) the powers of a receiver appointed under the Proceeds of Crime Act 2002 s 48 or s 50 (s 418(4)). As to bankruptcies preceding the Insolvency Act 1986 see also the Proceeds of Crime Act 2002 s 418(5).

If an order for the winding up of a company (or limited liability partnership) which may be wound up under the Insolvency Act 1986 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 438 et seq) is made, or it passes a resolution for its voluntary winding up (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARAS 939 et seq, 1308), the powers of a receiver appointed under the Proceeds of Crime Act 2002 s 48 or s 50 must not be exercised, in relation to any property which is held by the company and in relation to which the functions of the liquidator are exercisable, either so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company's creditors or so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property: s 426(1), (4), (5)(a), (6) (s 426(5)(a) amended by the Serious Crime Act 2007 Sch 8 para 78(3)(a)). However, nothing in the Insolvency Act 1986 may be taken to restrict (or enable the restriction of) the exercise of the powers of a receiver appointed under the Proceeds of Crime Act 2002 s 48 or s 50: see s 426(7). As to windings-up preceding the Insolvency Act 1986 see also the Proceeds of Crime Act 2002 426(10).

For Scottish and Northern Irish provisions corresponding to the provisions of ss 418, 426 see ss 421, 424, 428.

If a company which may be wound up under the Insolvency Act 1986 holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the powers of a receiver appointed under the Proceeds of Crime Act 2002 s 48 or s 50 must not be exercised, in relation to any property which is held by the company and in relation to which the functions of the receiver are exercisable, either so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company's creditors or so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property: s 430(1)(a), (4), (5)(a), (6) (s 430(5)(a) amended by the Serious Crime Act 2007 Sch 8 para 82(3)(a)). However, nothing in the Insolvency Act 1986 may be taken to restrict (or enable the restriction of) the exercise of the powers of a receiver appointed under the Proceeds of Crime Act 2002 s 48 or s 50: see s 430(7).

In ss 426, 430, 'company' includes a limited liability partnership which may be wound up under the Insolvency Act 1986 (Proceeds of Crime Act 2002 s 431(1)); and a reference in s 426 or s 430 to a company passing a resolution for its voluntary winding up is to be construed in relation to a limited liability partnership as a reference to the partnership making a determination for its voluntary winding up (s 431(2)).

UPDATE

437-440 Appointment of management receivers ... Powers of enforcement receivers

CrimPR Pts 57, 60, 61 now Criminal Procedure Rules 2010, SI 2010/60, Pts 57, 60, 61.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/I. MANAGEMENT RECEIVERS AND ENFORCEMENT RECEIVERS/438. Powers of management receivers.

438. Powers of management receivers.

If the court appoints a receiver¹ it may act under the following provisions on the application of the person who applied for the restraint order².

The court may by order confer on the receiver the following powers in relation to any realisable property to which the restraint order applies:

- 1447 (1) power to take possession of the property³;
- 1448 (2) power to manage or otherwise deal with⁴ the property⁵;
- 1449 (3) power to start, carry on or defend any legal proceedings in respect of the property⁶;
- 1450 (4) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses⁷.

The court may also by order confer on the receiver power to enter any premises in England and Wales and to do any of the following:

- 1451 (a) search for or inspect anything authorised by the court⁸;
- 1452 (b) make or obtain a copy, photograph or other record of anything so authorised⁹;
- 1453 (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court¹⁰.

The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions:

- 1454 (i) hold property¹¹;
- 1455 (ii) enter into contracts¹²;
- 1456 (iii) sue and be sued¹³;
- 1457 (iv) employ agents¹⁴;
- 1458 (v) execute powers of attorney, deeds or other instruments¹⁵;
- 1459 (vi) take any other steps the court thinks appropriate¹⁶.

The court may order any person who has possession of realisable property to which the restraint order applies to give possession of it to the receiver¹⁷.

The court:

- 1460 (A) may order a person holding an interest in realisable property to which the restraint order applies to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift¹⁸;
- 1461 (B) may (on the payment being made) by order transfer¹⁹, grant or extinguish any interest in the property²⁰.

The court may order that a power conferred by an order under these provisions is to be subject to such conditions and exceptions as it specifies²¹.

1 le under the Proceeds of Crime Act 2002 s 48 (see PARA 437).

2 Proceeds of Crime Act 2002 s 49(1). As to restraint orders see PARA 424. As to an appeal against the making of, or refusal to make an order under s 49, see PARA 447. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 49, or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.

The following provisions apply to an application for the conferral of powers on a management receiver under s 49(1), an enforcement receiver under s 51(1) (see PARA 440): CrimPR 60.2(1).

The application may be made without notice if the application is to give the receiver power to take possession of property and: (1) the application is joined with an application for a restraint order under CrimPR 59.1 (see PARA 425); (2) the application is urgent; or (3) there are reasonable grounds for believing that giving notice would cause the dissipation of the property which is the subject of the application: CrimPR 60.2(2).

The application must be made in writing and supported by a witness statement which must: (a) give the grounds for the application; (b) give full details of the realisable property in respect of which the applicant is seeking the order and specify the person holding that realisable property; and (c) where the application is made by an accredited financial investigator, include a statement that he has been authorised to make the application under the Proceeds of Crime Act 2002 s 68 (see PARA 452): CrimPR 60.2(3).

Where the application is for the conferral of powers on an enforcement receiver, the applicant must provide the Crown Court with a copy of the confiscation order made against the defendant: CrimPR 60.2(4).

The application and witness statement must be lodged with the Crown Court: CrimPR 60.2(5). Except where, under CrimPR 60.2(2), notice of the application is not required to be served, the application and witness statement must be served on the defendant, any person who holds realisable property in respect of which a receiver has been appointed or in respect of which an application for a receiver has been made, any other person whom the applicant knows to be affected by the application, and the receiver (if one has already been appointed), at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 60.2(6).

If the court makes an order for the conferral of powers on a receiver, the applicant must serve copies of the order on the defendant, any person who holds realisable property in respect of which the receiver has been appointed, and any other person whom the applicant knows to be affected by the order: CrimPR 60.2(7).

As to the meaning of 'property' see PARA 391 note 13; and as to the meaning of 'realisable property' see PARA 409 note 12. As to the meaning of 'confiscation order' see PARA 399 note 1. As to the meaning of 'defendant' for these purposes see PARA 391 note 1. As to when property is 'held' by a person see PARA 391 note 13.

Applications in receivership proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise: CrimPR 61.3. Restraint proceedings and receivership proceedings may be heard in chambers: CrimPR 61.4. For further provisions relating to receivership see CrimPR 61.5-61.21. See also the Proceeds of Crime Act 2002 s 69; and PARA 441.

3 Proceeds of Crime Act 2002 s 49(2)(a). Section 49(2), s 49(5) (see the text and notes 4-7, 17) and s 49(6) (see the text and notes 18-20) do not apply to property for the time being subject to a charge under any of the following repealed or revoked provisions: the Drug Trafficking Offences Act 1986 s 9; the Criminal Justice Act 1988 s 78; the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588 (NI 17), art 14; the Drug Trafficking Act 1994 s 27; and the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9), art 32: see the Proceeds of Crime Act 2002 s 49(7).

4 Managing or otherwise dealing with property includes: (1) selling the property or any part of it or interest in it (Proceeds of Crime Act 2002 s 49(10)(a)); (2) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property (s 49(10)(b)); (3) incurring capital expenditure in respect of the property (s 49(10)(c)). As to an 'interest', including a beneficial interest, see PARA 391 note 13.

5 Proceeds of Crime Act 2002 s 49(2)(b). See note 3. The court must not confer the power mentioned in s 49(2)(b) or (d) in respect of property unless it gives persons holding interests in the property a reasonable opportunity to make representations to it: s 49(8)(a). Section 49(8), so far as relating to the power mentioned in s 49(2)(b), does not apply to property which is perishable or ought to be disposed of before its value diminishes: s 49(8A) (added by the Serious Crime Act 2007 s 82(1)).

6 Proceeds of Crime Act 2002 s 49(2)(c). See note 3.

- 7 Proceeds of Crime Act 2002 s 49(2)(d). See notes 3, 5.
- 8 Proceeds of Crime Act 2002 s 49(3)(a).
- 9 Proceeds of Crime Act 2002 s 49(3)(b).
- 10 Proceeds of Crime Act 2002 s 49(3)(c).
- 11 Proceeds of Crime Act 2002 s 49(4)(a).
- 12 Proceeds of Crime Act 2002 s 49(4)(b).
- 13 Proceeds of Crime Act 2002 s 49(4)(c).
- 14 Proceeds of Crime Act 2002 s 49(4)(d).
- 15 Proceeds of Crime Act 2002 s 49(4)(e).
- 16 Proceeds of Crime Act 2002 s 49(4)(f).
- 17 Proceeds of Crime Act 2002 s 49(5). See note 3.
- 18 Proceeds of Crime Act 2002 s 49(6)(a). See note 3. As to tainted gifts see PARA 398. The court must not exercise the power conferred on it by s 49(6) in respect of property unless it gives persons holding interests in the property a reasonable opportunity to make representations to it: s 49(8)(b).
- 19 As to when property is 'transferred' see PARA 391 note 13.
- 20 Proceeds of Crime Act 2002 s 49(6)(b).
- 21 Proceeds of Crime Act 2002 s 49(9). See also PARA 443.

UPDATE

437-440 Appointment of management receivers ... Powers of enforcement receivers

CrimPR Pts 57, 60, 61 now Criminal Procedure Rules 2010, SI 2010/60, Pts 57, 60, 61.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/I. MANAGEMENT RECEIVERS AND ENFORCEMENT RECEIVERS/439. Appointment of enforcement receivers.

439. Appointment of enforcement receivers.

Where:

- 1462 (1) a confiscation order¹ is made²;
- 1463 (2) it is not satisfied³; and
- 1464 (3) it is not subject to appeal⁴,

the Crown Court, on the application of the prosecutor, may by order appoint a receiver in respect of realisable property⁵.

1 As to the meaning of 'confiscation order' see PARA 399 note 1.

2 Proceeds of Crime Act 2002 s 50(1)(a).

3 Proceeds of Crime Act 2002 s 50(1)(b). As to when a confiscation order is 'satisfied' see PARA 414 note 3.

4 Proceeds of Crime Act 2002 s 50(1)(c).

5 Proceeds of Crime Act 2002 s 50(2). As to the meaning of 'property' see PARA 391 note 13; and as to the meaning of 'realisable property' see PARA 409 note 12. As to an appeal against the making of, or refusal to make, an order under s 50 see PARA 447. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 50(2), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4. For procedural rules relating to the appointment of enforcement receivers see CrimPR 60.1(1)-(7); and PARA 437 note 4. As to sums in the hands of receivers, security, remuneration, accounts and non-compliance with procedural rules and directions see CrimPR 60.4-60.8. The Taxes Management Act 1970 ss 75, 77 (receivers: income tax and capital gains tax: see **CAPITAL GAINS TAXATION** vol 5(1) (2004 Reissue) PARA 418; **INCOME TAXATION** vol 23(2) (Reissue) PARA 1247) do not apply in relation to a receiver appointed under the Proceeds of Crime Act 2002 s 50: s 488, Sch 10 para 1(a). See also s 69; and PARA 441.

If a person is adjudged bankrupt in England and Wales any property in respect of which an order under s 50 is in force is excluded from his estate for the purposes of the Insolvency Act 1986 Pt 9 (ss 264-371) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 124 et seq); Proceeds of Crime Act 2002 s 417(1), (2)(b); and see also s 417(3) (property in Scotland). See also, in connection with a receiver's powers in respect of the property of a bankrupt, s 418(1), (2)(a), (3)-(5); and PARA 437 note 4. If a person who is adjudged bankrupt in England and Wales has made a tainted gift (whether directly or indirectly) no order may be made under the Insolvency Act 1986 s 339, s 340 or s 423 (avoidance of certain transactions: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 653 et seq) in respect of the making of the gift at any time when there is in force in respect of such property an order under the Proceeds of Crime Act 2002 s 50 (s 419(1), (2)(b), (4)), or, as from a day to be appointed, there is in force in respect of such property an order under s 67A (see PARA 451) (or corresponding Scottish or Northern Ireland provisions) (s 419(2)(c) (ss 419(2)(c), 427(3)(c) prospectively added, s 426(2) prospectively substituted, s 427(4) prospectively amended, by the Policing and Crime Act 2009 Sch 7 paras 81(1), (2)(b), 88(1), (2), 89(1), (2)(b), (3): at the date at which this volume states the law no day had been appointed for the coming into force of these amendments)), and any order made under the Insolvency Act 1986 s 339, s 340 or s 423 after such an order is discharged must take into account any realisation under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) of property held by the recipient of the tainted gift (s 419(3)). As to bankruptcies preceding the Insolvency Act 1986 see also s 419(5). As to tainted gifts see PARA 398.

If an order for the winding up of a company (or limited liability partnership) which may be wound up under the Insolvency Act 1986 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 438 et seq) is made, or it passes a resolution for its voluntary winding up (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARAS 939 et seq, 1308), the functions of the liquidator (or any provisional liquidator) are not

exercisable in relation to any property in respect of which an order under the Proceeds of Crime Act 2002 s 50 is in force: s 426(1), (2)(b) (amended by the Serious Crime Act 2007 Sch 8 para 78(2)(a), Sch 14; as so prospectively substituted); and see also the Proceeds of Crime Act 2002 s 426(3) (property in Scotland). See also, in connection with a receiver's powers in respect of property concerned in a winding up, s 426(4), (5)(a), (6), (7); and PARA 437 note 4. If an order for the winding up of a company which may be wound up under the Insolvency Act 1986 is made or it passes a resolution for its voluntary winding up, and it has made a tainted gift (whether directly or indirectly), no order may be made under s 238, s 239 or s 423 (avoidance of certain transactions: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 843 et seq) and no decree may be granted under s 242 or s 243 (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when there is in force in respect of such property an order under the Proceeds of Crime Act 2002 s 50 (s 427(1), (2), (3)(b), (5) (s 427(3)(b) amended by the Serious Crime Act 2007 Sch 8 para 79(a), Sch 14)) or, as from a day to be appointed, there is in force in respect of such property an order under the Proceeds of Crime Act 2002 s 67A (see PARA 451) (s 427(3)(c) (as so prospectively added)), and any order made under the Insolvency Act 1986 s 238, s 239 or s 423 or decree granted under s 242 or s 243, or otherwise, after a restraint order is discharged must take into account any realisation under the Proceeds of Crime Act 2002 Pt 2 of property held by the recipient of the tainted gift (s 427(4) (as so prospectively amended)). As to windings-up preceding the Insolvency Act 1986 see also the Proceeds of Crime Act 2002 ss 426(10), 427(6).

If a company which may be wound up under the Insolvency Act 1986 holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to any property in respect of which an order under the Proceeds of Crime Act 2002 s 50 is in force: s 430(1)(a), (2)(b) (s 430(2)(b) amended by the Serious Crime Act 2007 Sch 8 para 82(2)(a), Sch 14); and see also the Proceeds of Crime Act 2002 s 430(3) (property in Scotland). See also, in connection with a receiver's powers in respect of property which is subject to a floating charge, s 430(4), (5)(a), (6), (7); and PARA 437 note 4.

In ss 426, 427, 430, 'company' includes a limited liability partnership which may be wound up under the Insolvency Act 1986 (Proceeds of Crime Act 2002 s 431(1)); and a reference in ss 426, 427, 430 to a company passing a resolution for its voluntary winding up is to be construed in relation to a limited liability partnership as a reference to the partnership making a determination for its voluntary winding up (s 431(2)).

For Scottish and Northern Irish provisions corresponding to the provisions of the Proceeds of Crime Act 2002 ss 417, 419, 426, 427 see ss 420-422, 423-425, 428, 429.

UPDATE

437-440 Appointment of management receivers ... Powers of enforcement receivers

CrimPR Pts 57, 60, 61 now Criminal Procedure Rules 2010, SI 2010/60, Pts 57, 60, 61.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/I. MANAGEMENT RECEIVERS AND ENFORCEMENT RECEIVERS/440. Powers of enforcement receivers.

440. Powers of enforcement receivers.

If the court appoints a receiver¹ the court may act under the following provisions on the application of the prosecutor².

The court may by order confer on the receiver the following powers in relation to the realisable property³:

- 1465 (1) power to take possession of the property⁴;
- 1466 (2) power to manage or otherwise deal with⁵ the property⁶;
- 1467 (3) power to realise the property, in such manner as the court may specify⁷;
- 1468 (4) power to start, carry on or defend any legal proceedings in respect of the property⁸.

The court may also by order confer on the receiver power to enter any premises in England and Wales and to do any of the following:

- 1469 (a) search for or inspect anything authorised by the court⁹;
- 1470 (b) make or obtain a copy, photograph or other record of anything so authorised¹⁰;
- 1471 (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court¹¹.

The court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions:

- 1472 (i) hold property¹²;
- 1473 (ii) enter into contracts¹³;
- 1474 (iii) sue and be sued¹⁴;
- 1475 (iv) employ agents¹⁵;
- 1476 (v) execute powers of attorney, deeds or other instruments¹⁶;
- 1477 (vi) take any other steps the court thinks appropriate¹⁷.

The court may order any person who has possession of realisable property to give possession of it to the receiver¹⁸.

The court:

- 1478 (A) may order a person holding an interest in realisable property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant¹⁹ or the recipient of a tainted gift²⁰;
- 1479 (B) may (on the payment being made) by order transfer, grant or extinguish any interest in the property²¹.

The court may order that a power conferred by an order under these provisions is to be subject to such conditions and exceptions as it specifies²².

1 le under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

2 Proceeds of Crime Act 2002 s 51(1). As to an appeal against the making of, or refusal to make, an order under s 51 see PARA 447. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 51, or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4. For procedural rules relating to s 51(1) see CrimPR 60.2(1)-(7); and PARA 438 note 2. Applications in receivership proceedings are to be dealt with without a hearing, unless the Crown Court orders otherwise: CrimPR 61.3. Restraint proceedings and receivership proceedings may be heard in chambers: CrimPR 61.4. For further provisions relating to receivership proceedings see CrimPR 61.5-61.21. See also the Proceeds of Crime Act 2002 s 69; and PARA 441.

3 As to the meaning of 'property' see PARA 391 note 13; and as to the meaning of 'realisable property' see PARA 409 note 12.

4 Proceeds of Crime Act 2002 s 51(2)(a). Section 51(2) (see the text and notes 1-3, 5-8), s 51(5) (see the text and note 18) and s 51(6) (see the text and notes 19-21) do not apply to property for the time being subject to a charge under any of the following repealed or revoked provisions: the Drug Trafficking Offences Act 1986 s 9; the Criminal Justice Act 1988 s 78; the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, SI 1990/2588 (NI 17), art 14; the Drug Trafficking Act 1994 s 27; and the Proceeds of Crime (Northern Ireland) Order 1996, SI 1996/1299 (NI 9), art 32: see the Proceeds of Crime Act 2002 s 51(7).

5 Managing or otherwise dealing with property includes: (1) selling the property or any part of it or interest in it (Proceeds of Crime Act 2002 s 51(10)(a)); (2) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property (s 51(10)(b)); (3) incurring capital expenditure in respect of the property (s 51(10)(c)). As to an 'interest', including a beneficial interest, see PARA 391 note 13.

6 Proceeds of Crime Act 2002 s 51(2)(b). See note 4. The court must not confer the power mentioned in s 51(2)(b) or (c) in respect of property unless it gives persons holding interests in the property a reasonable opportunity to make representations to it: s 51(8)(a). Section 51(8), so far as relating to the power mentioned in subsection (2)(b), does not apply to property which is perishable or ought to be disposed of before its value diminishes: s 51(8A) (added by the Serious Crime Act 2007 s 82(2)).

7 Proceeds of Crime Act 2002 s 51(2)(c). See notes 4, 6.

8 Proceeds of Crime Act 2002 s 51(2)(d). See note 4.

9 Proceeds of Crime Act 2002 s 51(3)(a).

10 Proceeds of Crime Act 2002 s 51(3)(b).

11 Proceeds of Crime Act 2002 s 51(3)(c).

12 Proceeds of Crime Act 2002 s 51(4)(a). As to when property is 'held' by a person see PARA 391 note 13.

13 Proceeds of Crime Act 2002 s 51(4)(b).

14 Proceeds of Crime Act 2002 s 51(4)(c).

15 Proceeds of Crime Act 2002 s 51(4)(d).

16 Proceeds of Crime Act 2002 s 51(4)(e).

17 Proceeds of Crime Act 2002 s 51(4)(f).

18 Proceeds of Crime Act 2002 s 51(5). See note 4. In s 51(5) 'any person' does not include tenants protected by contract and/or statute who were living in a property classified as a realisable asset belonging to the person who is the subject of a confiscation order: see *Brittain (in her capacity as receiver) v N* [2009] EWHC 2884 (Admin), [2009] All ER (D) 173 (Nov) (decided under the corresponding provisions of the Criminal Justice Act 1988 (ie s 80(4) (repealed))).

19 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

20 Proceeds of Crime Act 2002 s 51(6)(a). See note 4. As to tainted gifts see PARA 398. The court must not exercise the power conferred on it by s 51(6) in respect of property unless it gives persons holding interests in the property a reasonable opportunity to make representations to it: s 51(8)(b).

21 Proceeds of Crime Act 2002 s 51(6)(b). See notes 4, 20.

22 Proceeds of Crime Act 2002 s 51(9). See also PARA 443.

UPDATE

437-440 Appointment of management receivers ... Powers of enforcement receivers

CrimPR Pts 57, 60, 61 now Criminal Procedure Rules 2010, SI 2010/60, Pts 57, 60, 61.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/l. MANAGEMENT RECEIVERS AND ENFORCEMENT RECEIVERS/441. Powers of court and receiver.

441. Powers of court and receiver.

Certain powers conferred¹ on a court², the powers of a management receiver³ or an enforcement receiver⁴, and, as from a day to be appointed, the powers of an appropriate officer and a senior officer in connection with the seizure of property⁵:

- 1480 (1) must be exercised with a view to the value for the time being of realisable property⁶ being made available (by the property's realisation) for satisfying any confiscation order⁷ that has been or may be made against the defendant⁸;
- 1481 (2) must be exercised, in a case where a confiscation order has not been made, with a view to securing that there is no diminution in the value of realisable property⁹;
- 1482 (3) must be exercised without taking account of any obligation of the defendant or a recipient of a tainted gift¹⁰ if the obligation conflicts with the object of satisfying any confiscation order that has been or may be made against the defendant¹¹; and
- 1483 (4) may be exercised in respect of a debt owed by the Crown¹².

However, heads (1) to (4) above have effect subject to the following rules:

- 1484 (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest¹³ held by him¹⁴;
- 1485 (b) in the case of realisable property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift¹⁵; and
- 1486 (c) in a case where a confiscation order has not been made against the defendant, property must not be sold if the court so orders under the provision¹⁶ described below¹⁷.

If on an application by the defendant, or by the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold¹⁸.

1 Ie the powers conferred by the Proceeds of Crime Act 2002 ss 41-59 (see PARAS 424-446), ss 62-67 (see PARAS 443-450) and, as from a day to be appointed, ss 67A-67D (see PARA 451): Proceeds of Crime Act 2002 s 69(1) (s 69(1) prospectively amended, s 69(1)(c), (d) prospectively added, by the Policing and Crime Act 2009 s 55(1), (4)(a), Sch 7 paras 66, 67). At the date at which this volume states the law no day had been appointed for the coming into force of these amendments.

2 Proceeds of Crime Act 2002 s 69(1)(a) (amended by the Serious Crime Act 2007 Sch 8 para 34(a)).

3 Ie a receiver appointed under the Proceeds of Crime Act 2002 s 48 (see PARA 437).

4 Proceeds of Crime Act 2002 s 69(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 34(b)). An enforcement receiver is a receiver appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

5 Proceeds of Crime Act 2002 s 69(1)(c), (d) (prospectively added: see note 1). As to the powers referred to see the Proceeds of Crime Act 2002 ss 47C-47L (appropriate officers) and s 47G (senior officers); and PARAS 429-433.

6 As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

7 As to the meaning of 'confiscation order' see PARA 399 note 1. As to when a confiscation order is 'satisfied' see PARA 414 note 3.

8 Proceeds of Crime Act 2002 s 69(2)(a). As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

9 Proceeds of Crime Act 2002 s 69(2)(b).

10 As to tainted gifts see PARA 398.

11 Proceeds of Crime Act 2002 s 69(2)(c).

12 Proceeds of Crime Act 2002 s 69(2)(d). See further *Serious Fraud Office v Lexi Holdings plc* [2008] EWCA Crim 1443, [2009] QB 376, [2009] 1 All ER 586.

13 As to an 'interest' in property see PARA 391 note 13. As to when property is 'held' by a person see PARA 391 note 13.

14 Proceeds of Crime Act 2002 s 69(3)(a).

15 Proceeds of Crime Act 2002 s 69(3)(b).

16 Ie the Proceeds of Crime Act 2002 s 69(4) (see the text and note 18).

17 Proceeds of Crime Act 2002 s 69(3)(c).

18 Proceeds of Crime Act 2002 s 69(4). An order under s 69(4) may be revoked or varied: s 69(5).

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442. Protection.

If a management receiver¹ or an enforcement receiver²:

- 1487 (1) takes action in relation to property³ which is not realisable property⁴;
- 1488 (2) would be entitled to take the action if it were realisable property⁵; and
- 1489 (3) believes on reasonable grounds that he is entitled to take the action⁶,

he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence⁷.

1 Is a receiver appointed under the Proceeds of Crime Act 2002 s 48 (see PARA 437).

2 Proceeds of Crime Act 2002 s 61 (amended by the Serious Crime Act 2007 Sch 8 para 28). An enforcement receiver mentioned in the text refers to a receiver appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

3 As to the meaning of 'property' see PARA 391 note 13.

4 Proceeds of Crime Act 2002 s 61(a). As to the meaning of 'realisable property' see PARA 409 note 12.

5 Proceeds of Crime Act 2002 s 61(b).

6 Proceeds of Crime Act 2002 s 61(c).

7 Proceeds of Crime Act 2002 s 61.

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443. Further applications.

A management receiver¹ or an enforcement receiver² may apply to the Crown Court for an order giving directions as to the exercise of his powers³.

Any person affected by action taken by such a receiver⁴, or who may be affected by action such a receiver proposes to take⁵, may apply to the Crown Court⁶.

On an application under these provisions the court may make such order as it believes is appropriate⁷.

1 Ie a receiver appointed under the Proceeds of Crime Act 2002 s 48 (see PARA 437).

2 Ie a receiver appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

3 Proceeds of Crime Act 2002 s 62(1), (2).

4 Proceeds of Crime Act 2002 s 62(3)(a).

5 Proceeds of Crime Act 2002 s 62(3)(b).

6 Proceeds of Crime Act 2002 s 62(3). The following provisions apply to such applications and to applications under s 63(1) (see PARA 444), for the discharge or variation of orders relating to receivers: CrimPR 60.3(1).

The application must be made in writing and lodged with the Crown Court: CrimPR 60.3(2). The application must be served on the following persons (except where they are the person making the application): (1) the person who applied for appointment of the receiver; (2) the defendant; (3) any person who holds realisable property in respect of which the receiver has been appointed; (4) the receiver; and (5) any other person whom the applicant knows to be affected by the application, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 60.3(3). If the court makes an order for the discharge or variation of an order relating to a receiver under the Proceeds of Crime Act 2002 s 62(3), the applicant must serve copies of the order on any persons whom he knows to be affected by the order: CrimPR 60.3(4). As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12. As to when property is 'held' by a person see PARA 391 note 13.

7 Proceeds of Crime Act 2002 s 62(4). The power under s 62(4) must be exercised with regard to the matters listed in s 69 (see PARA 441): see s 69(1), (2). As to an appeal against the making of, or refusal to make, an order under s 62 see PARA 447. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 62(4), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.

UPDATE

443-444 Further applications, Discharge and variation

CrimPR Pt 60 now Criminal Procedure Rules 2010, SI 2010/60, Pt 60.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(3) ORDERS FOR RETRIEVING THE PROCEEDS OF CRIME/(i) Confiscation Orders under the Proceeds of Crime Act 2002/I. MANAGEMENT RECEIVERS AND ENFORCEMENT RECEIVERS/444. Discharge and variation.

444. Discharge and variation.

The following persons may apply to the Crown Court to vary or discharge an order made under any of the provisions relating to the appointment and powers of management receivers, enforcement receivers¹:

- 1490 (1) the receiver²;
- 1491 (2) the person who applied for the order³;
- 1492 (3) any person affected by the order⁴.

On such an application the court: (a) may discharge the order⁵; (b) may vary the order⁶.

¹ In the Proceeds of Crime Act 2002 ss 48-51 (see PARAS 437-440): see s 63(1) (amended by the Serious Crime Act 2007 Sch 8 para 30(a)).

² Proceeds of Crime Act 2002 s 63(1)(a).

³ Proceeds of Crime Act 2002 s 63(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 30(b), Sch 14).

⁴ Proceeds of Crime Act 2002 s 63(1)(c). For procedural provisions see PARA 443 note 6.

⁵ Proceeds of Crime Act 2002 s 63(2)(a). However, in the case of an order under s 48 or s 49 (see PARAS 437-438):

697 (1) if the condition in s 40 (see PARA 423) which was satisfied was that proceedings were started or an application was made, the court must discharge the order on the conclusion of the proceedings or of the application (as the case may be) (s 63(3)(a));

698 (2) if the condition which was satisfied was that an investigation was started or an application was to be made, the court must discharge the order if within a reasonable time proceedings for the offence are not started or the application is not made (as the case may be) (s 63(3)(b)).

As to when proceedings for an offence are 'started' see PARA 391 note 1. As to when proceedings for an offence are 'concluded' see PARA 414 note 3.

The powers given by s 63(2) must be exercised with regard to the matters specified in s 69 (see PARA 441): s 69(1).

If the court makes an order for the discharge or variation of an order relating to a receiver under s 63(2), the applicant must serve copies of the order on any persons whom he knows to be affected by the order: CrimPR 60.3(4).

As to an appeal against the making of, or a refusal to make, an order under the Proceeds of Crime Act 2002 s 63(2) see PARA 447. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 63(2), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.

⁶ Proceeds of Crime Act 2002 s 63(2)(b). See note 6.

UPDATE

443-444 Further applications, Discharge and variation

CrimPR Pt 60 now Criminal Procedure Rules 2010, SI 2010/60, Pt 60.

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445. Management receivers: discharge.

Where a management receiver stands appointed¹ in respect of realisable property², and the court appoints³ an enforcement receiver⁴, the court must order the management receiver to transfer to the other receiver all the property held by the management receiver by virtue of the powers conferred⁵ on him as such⁶. If the management receiver complies with such an order, he is discharged: (1) from his appointment as management receiver⁷; (2) from any obligation⁸ arising from his appointment⁹.

1 le under the Proceeds of Crime Act 2002 s 48 (see PARA 437).

2 Proceeds of Crime Act 2002 s 64(1)(a). As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

3 le under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

4 Proceeds of Crime Act 2002 s 64(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 31(2), Sch 14).

5 le by the Proceeds of Crime Act 2002 s 49 (see PARA 438).

6 Proceeds of Crime Act 2002 s 64(2). Section 64(2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under s 49(2)(d) (see PARA 438): s 64(4). See also s 69; and PARA 441. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 64(2), (6), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.

7 Proceeds of Crime Act 2002 s 64(5)(a).

8 le under the Proceeds of Crime Act 2002.

9 Proceeds of Crime Act 2002 s 64(5)(b).

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446. Restrictions.

Where a court makes an order¹ appointing an enforcement receiver in respect of any realisable property²:

1493 (1) no distress may be levied³ against the property, except with the leave of the Crown Court and subject to any terms the Crown Court may impose⁴; and

1494 (2) if the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the Crown Court and subject to any terms the Crown Court may impose⁵.

If a court in which proceedings are pending in respect of any property is satisfied that an order appointing an enforcement receiver in respect of the property has been applied for or made, the court may either stay the proceedings or allow them to continue on any terms it thinks fit⁶.

1 le under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

2 Proceeds of Crime Act 2002 s 59(1). As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

3 And, as from a day to be appointed, no power to use the procedure in the Tribunals, Courts and Enforcement Act 2007 Sch 12 (taking control of goods) may be exercised: Proceeds of Crime Act 2002 s 59(2) (prospectively amended by the Tribunals, Courts and Enforcement Act 2007 Sch 13 para 144). At the date at which this volume states the law no such day had been appointed.

4 Proceeds of Crime Act 2002 s 59(2). For procedural rules see PARA 428 note 4.

5 Proceeds of Crime Act 2002 s 59(3), (4).

6 Proceeds of Crime Act 2002 s 59(5). Before exercising any power conferred by s 59(5), the court must give an opportunity to be heard to the prosecutor (s 59(6)(a)) and to the receiver (if the order appointing an enforcement receiver has been made) (s 59(6)(b)). See also s 69; and PARA 441.

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447. Appeal.

If, on an application for an order¹ for the appointment of a management receiver or enforcement receiver or an order authorising such a receiver to act with respect to realisable property², the court decides not to make an order, the person who applied for the order may appeal to the Court of Appeal against the decision³.

If the court makes an order⁴ appointing a management receiver or enforcement receiver or an order authorising such a receiver to act with respect to realisable property⁵, any person who applied for the order⁶, or any other person affected by the order⁷, may appeal to the Court of Appeal⁸ in respect of the court's decision⁹.

If, on a further application¹⁰, the court decides not to make the order sought, the person who applied for the order may appeal to the Court of Appeal against the decision¹¹. If the court makes an order on a further application, the following persons may appeal to the Court of Appeal in respect of the court's decision:

- 1495 (1) the person who applied for the order¹²;
- 1496 (2) any person affected by the order¹³;
- 1497 (3) the receiver¹⁴.

The following persons may appeal to the Court of Appeal against a decision of the court on an application¹⁵ for the discharge or variation of an order relating to the appointment of or powers of a receiver:

- 1498 (a) the person who applied for the order in respect of which the application was made¹⁶;
- 1499 (b) any person affected by the court's decision¹⁷;
- 1500 (c) the receiver¹⁸.

On any of these appeals, the Court of Appeal may:

- 1501 (i) confirm the decision¹⁹; or
- 1502 (ii) make such order as it believes is appropriate²⁰.

An appeal lies to the Supreme Court²¹ from a decision of the Court of Appeal on such an appeal²² at the instance of any person who was a party to the proceedings before the Court of Appeal²³. In such a case the Supreme Court may: (A) confirm the decision of the Court of Appeal²⁴; or (B) make such order as it believes is appropriate²⁵.

¹ ie an order under any of the following provisions in the Proceeds of Crime Act 2002: s 48 (see PARA 437), s 49 (see PARA 438), s 50 (see PARA 439), s 51 (see PARA 440).

² As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

- 3 Proceeds of Crime Act 2002 s 65(1) (s 65(1), (2) amended by the Serious Crime Act 2007 Sch 8 para 32(1)-(3), Sch 14).
- 4 See note 1.
- 5 Proceeds of Crime Act 2002 s 65(2) (as amended: see note 3).
- 6 Proceeds of Crime Act 2002 s 65(2)(a).
- 7 Proceeds of Crime Act 2002 s 65(2)(b).
- 8 See PARAS 417 note 3, 426 note 2.
- 9 Proceeds of Crime Act 2002 s 65(2).
- 10 Is an application for an order under the Proceeds of Crime Act 2002 s 62 (see PARA 443).
- 11 Proceeds of Crime Act 2002 s 65(3).
- 12 Proceeds of Crime Act 2002 s 65(4)(a).
- 13 Proceeds of Crime Act 2002 s 65(4)(b).
- 14 Proceeds of Crime Act 2002 s 65(4)(c).
- 15 Is under the Proceeds of Crime Act 2002 s 63 (see PARA 444).
- 16 Proceeds of Crime Act 2002 s 65(5)(a) (Serious Crime Act 2007 Sch 8 para 32(4), Sch 14).
- 17 Proceeds of Crime Act 2002 s 65(5)(b).
- 18 Proceeds of Crime Act 2002 s 65(5)(c).
- 19 Proceeds of Crime Act 2002 s 65(6)(a). In exercising its powers under s 65(6), the Court of Appeal must have regard to matters listed in s 69 (see PARA 441): s 69(1). As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 65(6), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.
- 20 Proceeds of Crime Act 2002 s 65(6)(b). See note 19.
- 21 As to the Supreme Court see PARA 53 note 1. As to the procedure on such an appeal see PARA 419.
- 22 Proceeds of Crime Act 2002 s 66(1) (amended by the Constitutional Reform Act 2005 s 40(4), Sch 9 para 77(1), (3)).
- 23 Proceeds of Crime Act 2002 s 66(2).
- 24 Proceeds of Crime Act 2002 s 66(3)(a) (amended by the Constitutional Reform Act 2005 s 40(4), Sch 9 para 77(1), (3)). In exercising powers under the Proceeds of Crime Act 2002 s 66(3), regard must be had to the matters specified in s 69 (see PARA 441): s 69(1). As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 66(3), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.
- 25 Proceeds of Crime Act 2002 s 66(3)(b) (amended by the Constitutional Reform Act 2005 s 40(4), Sch 9 para 77(1), (3)). See note 24.

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J. APPLICATION OF SUMS

448. Enforcement receivers.

Where sums which are in the hands of an enforcement receiver¹ are:

- 1503 (1) the proceeds of the realisation of property² by the receiver³;
- 1504 (2) sums (other than those mentioned in head (1) above) in which the defendant⁴ holds an interest⁵,

the sums must be applied as follows:

- 1505 (a) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable⁶;
- 1506 (b) second, they must be applied in making any payments directed by the Crown Court⁷;
- 1507 (c) third, they must be applied⁸ on the defendant's behalf towards satisfaction of the confiscation order⁹.

If the amount payable under the confiscation order has been fully paid and any sums remain in the receiver's hands, he must distribute them:

- 1508 (i) among such persons who held (or hold) interests in the property concerned¹⁰ as the Crown Court directs¹¹; and
- 1509 (ii) in such proportions as it directs¹².

Before making such a direction the court must give persons who held (or hold) interests in the property concerned a reasonable opportunity to make representations to it¹³.

1 Ie a receiver appointed under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

2 Ie the realisation of property under the Proceeds of Crime Act 2002 s 51 (see PARA 440). As to the meaning of 'property' see PARA 391 note 13.

3 Proceeds of Crime Act 2002 s 54(1)(a).

4 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

5 Proceeds of Crime Act 2002 s 54(1)(b). As to an 'interest' see PARA 391 note 13.

6 Proceeds of Crime Act 2002 s 54(2)(a). The reference in the text to sums being payable is a reference to sums being payable by virtue of s 432. If property is subject to a restraint order made under s 41 (see PARA 424) (or corresponding Scottish or Northern Irish provisions) (s 432(5)(a), (6)(a)) and either a person acting as an insolvency practitioner (see PARA 424 note 5) incurs expenses in respect of property subject to the order in circumstances where he does not know (and has no reasonable grounds to believe) that the property is subject to the restraint order (s 432(5)(b), (c)), or a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the order in circumstances where the expenses are ones which (but for the effect of the order) might have been met by taking possession of and realising property subject to it

(s 432(6)(b), (c)), or, as from a day to be appointed, property is detained under or by virtue of s 44A (see PARAS 425, 426), s 47J (see PARA 429), s 47K (see PARA 433), s 47M (see PARA 434), s 47P (see PARA 434) (or corresponding Scottish or Northern Irish provisions), a person acting as an insolvency practitioner incurs expenses which are not ones in respect of the detained property and the expenses are ones which (but for the effect of the detention of the property) might have been met by taking possession of and realising the property (s 432(6A) (s 432(6A) prospectively added, s 432(7) prospectively substituted, by the Policing and Crime Act 2009 Sch 7 para 93: at the date at which this volume states the law no day had been appointed for the coming into force of these amendments)), then:

699 (1) until a day to be appointed, whether or not that person has seized or disposed of any property, he is entitled to payment of the expenses under the Proceeds of Crime Act 2002 s 54(2) or s 55(3) (see PARA 449) (s 432(7)(a) (amended by the Serious Crime Act 2007 s 74(2)(a), Sch 8 paras 1, 83(a)); and

700 (2) as from that day, whether or not the insolvency practitioner has seized or disposed of any property, the insolvency practitioner is entitled to payment of the expenses under the Proceeds of Crime Act 2002 s 54(2), s 55(3) or s 67D(2) (see PARA 451) if the restraint order was made under s 41 or (as the case may be) the property was detained under or by virtue of s 44A, s 47J, s 47K, s 47M or s 47P (s 432(7)(a) (as so prospectively substituted)).

7 Proceeds of Crime Act 2002 s 54(2)(b).

8 For these purposes, the receiver applies such sums by paying them to the appropriate designated officer on account of the amount payable under the order: the Proceeds of Crime Act 2002 s 54(6) (s 54(6), (7) amended by the Courts Act 2003 s 109(1), Sch 8 para 407). The appropriate designated officer is the one for the magistrates' court responsible for enforcing the confiscation order as if the amount ordered to be paid were a fine: Proceeds of Crime Act 2002 s 54(7) (as so amended).

9 Proceeds of Crime Act 2002 s 54(2)(c). As to the meaning of 'confiscation order' see PARA 399 note 1.

10 For the purposes of the Proceeds of Crime Act 2002 s 54(3), (4) (see the text and notes 11-13), the 'property concerned' is: (1) the property represented by the proceeds mentioned in s 54(1)(a) (see head (1) in the text) (s 54(5)(a)); and (2) the sums mentioned in s 54(1)(b) (see head (2) in the text) (s 54(5)(b)). As to when property is 'held' by a person see PARA 391 note 13.

11 Proceeds of Crime Act 2002 s 54(3)(a). See note 10. As to the enforcement in Scotland or Northern Ireland of an order made under or for the purposes of s 54(3), or the enforcement in England and Wales of a corresponding Scottish or Northern Irish order, see PARA 437 note 4.

Where the amount payable under a confiscation order has been fully paid and any sums remain in the hands of an enforcement receiver (CrimPR 60.4(1)) the receiver must make an application to the Crown Court for directions as to the distribution of the sums in his hands (CrimPR 60.4(2)). The application and any evidence which the receiver intends to rely on in support of the application must be served on: (1) the defendant; and (2) any other person who held (or holds) interests in any property realised by the receiver, at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 60.4(3).

If any of the provisions listed in CrimPR 60.4(5) (provisions as to the vesting of funds in a trustee in bankruptcy) apply, then the Crown Court must make a declaration to that effect: CrimPR 60.4(4). The provisions listed in CrimPR 60.4(5) are: (a) the Bankruptcy (Scotland) Act 1985 s 31B; (b) the Insolvency Act 1986 s 306B (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**); and (c) the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), art 297B.

See also the Proceeds of Crime Act 2002 s 69; and PARA 441.

12 Proceeds of Crime Act 2002 s 54(3)(b). See notes 10, 11.

13 Proceeds of Crime Act 2002 s 54(4).

UPDATE

448 Enforcement receivers

NOTE 11--CrimPR Pt 60 now Criminal Procedure Rules 2010, SI 2010/60, Pt 60.

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449. Sums received by designated officer.

Where a designated officer receives sums¹ on account of the amount payable under a confiscation order², the designated officer's receipt of the sum reduces the amount payable under the order, but he must apply the sums received as follows³.

First he must apply them in payment of such expenses incurred by a person acting as an insolvency practitioner as: (1) are payable⁴; but (2) are not already⁵ paid⁶.

If the designated officer received the sums under the provisions relating to enforcement receivers⁷ or, as from a day to be appointed, the provisions relating to the seizure of personal property⁸, he must next apply them:

- 1510 (a) first, in payment of the remuneration and expenses of a management receiver⁹, to the extent that they have not been met by virtue of the exercise by that receiver of a power¹⁰ to realise so much of the proportion as is necessary to meet the receiver's remuneration and expenses¹¹;
- 1511 (b) second, in payment of the remuneration and expenses of the enforcement receiver (or, as from a day to be appointed, any receiver)¹²; and
- 1512 (c) as from a day to be appointed, third, in payment to an appropriate officer of any amount to which the officer is¹³ entitled¹⁴.

If a direction was made¹⁵ for an amount of compensation to be paid out of any sums recovered under the confiscation order, the designated officer must next apply the sums in payment of that amount¹⁶.

If any amount remains after the designated officer makes any payments required by these provisions, the amount must be treated¹⁷ as if it were a fine imposed by a magistrates' court¹⁸.

1 Ie whether under the Proceeds of Crime Act 2002 s 54 (see PARA 448) or otherwise.

2 Proceeds of Crime Act 2002 s 55(1) (s 55(1), (2), (4)-(6) amended by the Courts Act 2003 s 109(1), Sch 8 para 408). As to the meaning of 'confiscation order' see PARA 399 note 1.

3 Proceeds of Crime Act 2002 s 55(2) (as amended: see note 2).

4 Proceeds of Crime Act 2002 s 55(3)(a). The reference in the text to sums being 'payable' is a reference to sums being payable under s 55(2) (see the text and note 3) by virtue of s 432: s 55(3)(a).

5 Ie under the Proceeds of Crime Act 2002 s 54(2)(a) (see PARA 448) or, as from a day to be appointed (see note 6), under s 67D(2)(a) (see PARA 451). As to the payment of expenses see further PARA 448 note 6.

6 Proceeds of Crime Act 2002 s 55(3)(b) (s 55(3), (4) prospectively amended, s 55(4)(c) prospectively added, by the Policing and Crime Act 2009 s 58(1), (4), (5): at the date at which this volume states the law no day had been appointed for the coming into force of these amendments).

7 Ie the Proceeds of Crime Act 2002 s 54 (see PARA 448).

8 Ie the Proceeds of Crime Act 2002 s 67D (see PARA 451).

9 Ie a receiver appointed under the Proceeds of Crime Act 2002 s 48 (see PARA 437).

10 le a power conferred by the Proceeds of Crime Act 2002 s 49(2)(d) (see PARA 438).

11 Proceeds of Crime Act 2002 s 55(4)(a) (as amended: see note 2). Until a day to be appointed s 55(4) does not apply if the receiver is a member of the staff of the Crown Prosecution Service or of the Commissioners for Her Majesty's Revenue and Customs; and it is immaterial whether he is a permanent or temporary member or he is on secondment from elsewhere (s 55(7) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)); as from that day the Proceeds of Crime Act 2002 s 55(4) does not apply in relation to the remuneration of a receiver if the receiver is a constable, a person employed by a police authority in England and Wales under the Police Act 1996 s 15 (see **POLICE** vol 36(1) (2007 Reissue) PARA 168) or a member of staff of the City of London police force, an accredited financial investigator (ie an accredited financial investigator who falls within a description specified in an order made for the purposes of the Proceeds of Crime Act 2002 s 55(4) by the Secretary of State under s 453), a member of staff of the Crown Prosecution Service, a member of staff of the Serious Fraud Office, a member of staff of the Revenue and Customs Prosecutions Office, a member of staff of the Commissioners for Her Majesty's Revenue and Customs, a member of staff of SOCA, or a member of staff of any government department not mentioned above; and it is immaterial for these purposes whether a person falls within any of the listed categories by virtue of a permanent or temporary appointment or a secondment from elsewhere (s 55(7)-(10) (s 55(7) prospectively substituted, s 55(8)-(10) prospectively added, by the Policing and Crime Act 2009 s 51(1), (2))). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

12 Proceeds of Crime Act 2002 s 55(4)(b) (as amended and prospectively amended: see notes 2, 6). See also note 11. As to enforcement receivers see PARAS 439-440.

13 le by virtue of the Proceeds of Crime Act 2002 s 67B (see PARA 451).

14 Proceeds of Crime Act 2002 s 55(4)(c) (prospectively added: see note 6).

15 le under the Proceeds of Crime Act 2002 s 13(6) (see PARA 400).

16 Proceeds of Crime Act 2002 s 55(5) (as amended: see note 2).

17 le for the purposes of the Courts Act 2003 s 38 (application of fines etc: see PARA 160; and **MAGISTRATES**).

18 Proceeds of Crime Act 2002 s 55(6) (as amended: see note 2).

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K. SEIZED MONEY AND PROPERTY

450. Seized money.

The provisions relating to seized money¹ apply to money which:

- 1513 (1) is held by a person² in an account maintained by him with a bank or a building society³;
- 1514 (2) is held by a person and has been seized by a constable under his general power⁴ of seizure⁵, and is held in an account maintained by a police force with a bank or building society⁶;
- 1515 (3) is held by a person and has been seized by an officer of Revenue and Customs under his general power⁷ of seizure⁸, and is held in an account maintained by the Commissioners for Her Majesty's Revenue and Customs with a bank or building society⁹.

The provisions relating to seized money apply if the following conditions are satisfied:

- 1516 (a) a restraint order¹⁰ has effect in relation to money within heads (1) to (3) above¹¹;
- 1517 (b) a confiscation order¹² is made against the person by whom the money is held¹³;
- 1518 (c) an enforcement receiver has not been appointed¹⁴ in relation to the money¹⁵;
- 1519 (d) any period allowed¹⁶ for payment of the amount ordered to be paid under the confiscation order has ended¹⁷.

In such a case a magistrates' court may order the bank or building society to pay the money to the designated officer for the court on account of the amount payable under the confiscation order¹⁸. If a bank or building society fails to comply with such an order:

- 1520 (i) the magistrates' court may order it to pay an amount not exceeding £5,000¹⁹; and
- 1521 (ii) the sum is to be treated²⁰ as adjudged to be paid by a conviction of the court²¹.

1 Ie the Proceeds of Crime Act 2002 s 67 (see the text and notes 2-21).

2 Proceeds of Crime Act 2002 s 67(1)(a).

3 Proceeds of Crime Act 2002 s 67(1)(b). For these purposes, a 'bank' is a deposit-taking business within the meaning of the Banking Act 1987 (see s 6 (repealed)); and 'building society' has the same meaning as in the Building Societies Act 1986 (see ss 5(3), 119(1), 125; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856); Proceeds of Crime Act 2002 s 67(8)(a), (b).

4 Ie under the Police and Criminal Evidence Act 1984 s 19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 886).

5 Proceeds of Crime Act 2002 s 67(2)(a).

6 Proceeds of Crime Act 2002 s 67(2)(b).

7 Ie under the Police and Criminal Evidence Act 1984 s 19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 886) as applied by the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 2007, SI 2007/3175, art 3(1), Sch 1.

8 Proceeds of Crime Act 2002 s 67(3)(a) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(2), (7)).

9 Proceeds of Crime Act 2002 s 67(3)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

10 As to restraint orders see PARA 424.

11 Proceeds of Crime Act 2002 s 67(4)(a).

12 As to the meaning of 'confiscation order' see PARA 399 note 1.

13 Proceeds of Crime Act 2002 s 67(4)(b).

14 Ie under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

15 Proceeds of Crime Act 2002 s 67(4)(d).

16 Ie under the Proceeds of Crime Act 2002 s 11 (see PARA 399).

17 Proceeds of Crime Act 2002 s 67(4)(e).

18 Proceeds of Crime Act 2002 s 67(5) (amended by the Courts Act 2003 s 109(1), Sch 8 para 409). This power must be exercised with regard to the matters specified in the Proceeds of Crime Act 2002 s 69 (see PARA 441): s 69(1).

An order under the Proceeds of Crime Act 2002 s 67 requiring a bank or building society to pay money to a magistrates' court officer (a 'payment order') must: (1) be directed to the bank or building society in respect of which the payment order is made; (2) name the person against whom the confiscation order has been made; (3) state the amount which remains to be paid under the confiscation order; (4) state the name and address of the branch at which the account in which the money ordered to be paid is held and the sort code of that branch, if the sort code is known; (5) state the name in which the account in which the money ordered to be paid is held and the account number of that account, if the account number is known; (6) state the amount which the bank or building society is required to pay to the court officer under the payment order; (7) give the name and address of the court officer to whom payment is to be made; and (8) require the bank or building society to make payment within a period of seven days beginning on the day on which the payment order is made, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances: CrimPR 58.12(1).

The payment order must be served on the bank or building society in respect of which it is made by leaving it at, or sending it by first class post to, the principal office of the bank or building society: CrimPR 58.12(2). Unless the contrary is proved, a payment order served by first class post is deemed to have been served on the second business day after posting: CrimPR 58.12(3).

19 Proceeds of Crime Act 2002 s 67(6)(a). In order to take account of changes in the value of money the Secretary of State may by order substitute another sum for the sum for the time being specified in this provision: s 67(7). At the date at which this volume states the law no such order had been made. As to the making of regulations under the Proceeds of Crime Act 2002 see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 789.

20 Ie for the purposes of the Magistrates' Courts Act 1980 (see **MAGISTRATES**).

21 Proceeds of Crime Act 2002 s 67(6)(b).

UPDATE

450 Seized money

NOTE 18--CrimPR 58.12 now Criminal Procedure Rules 2010, SI 2010/60, r 58.12.

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451. Seized personal property.

As from a day to be appointed¹ a magistrates' court may by order authorise an appropriate officer² to realise personal property which is held by a person and which either has been seized by an appropriate officer under a relevant seizure power³ or has been produced⁴ to an appropriate officer⁵ if:

- 1522 (1) a confiscation order⁶ is made against the person by whom the property is held⁷;
- 1523 (2) a receiver has not been appointed⁸ in relation to the property⁹; and
- 1524 (3) any period allowed¹⁰ for payment of the amount ordered to be paid under the confiscation order has ended¹¹.

If a magistrates' court makes such an order¹² a person affected by the order may appeal against the decision; and if the court decides not to make an order an appropriate officer may appeal against that decision¹³. Provision is made for the application of the proceeds of any realisation of property under these provisions¹⁴ and for the determination of amounts payable in respect of the costs of storage etc¹⁵.

1 The Proceeds of Crime Act 2002 ss 67A-67D (see the text and notes 2-15) are added by the Policing and Crime Act 2009 s 58(1), (2), as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'appropriate officer' see the Proceeds of Crime Act 2002 s 41A(3); and PARA 424 note 8 (definition applied by ss 67A(4), 67B(5), 67C(5), 67D(6) (prospectively added: see note 1)).

3 Proceeds of Crime Act 2002 s 67A(1)(a), (4) (prospectively added: see note 1). As to the meaning of 'relevant seizure power' see s 41A(4); and PARA 424 note 9 (definition applied by s 67A(4) (as so prospectively added: see note 1)).

4 Ie in compliance with a production order under the Proceeds of Crime Act 2002 s 345 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 805).

5 Proceeds of Crime Act 2002 s 67A(1)(b) (prospectively added: see note 1).

6 As to the meaning of 'confiscation order' see PARA 399 note 1.

7 Proceeds of Crime Act 2002 s 67A(2)(a) (prospectively added: see note 1).

8 Ie under the Proceeds of Crime Act 2002 s 50 (see PARA 439).

9 Proceeds of Crime Act 2002 s 67A(2)(b) (prospectively added: see note 1).

10 Ie under the Proceeds of Crime Act 2002 s 11 (see PARA 399).

11 Proceeds of Crime Act 2002 s 67A(2)(c) (prospectively added: see note 1).

12 Ie an order under the Proceeds of Crime Act 2002 s 67A (see the text and notes 1-5).

13 Proceeds of Crime Act 2002 s 67C(1), (2) (prospectively added: see note 1). The person by whom the property is held (ie the person mentioned in s 67A(2)(a): see the text and notes 6-7) may not appeal: s 67C(3) (as so prospectively added). All such appeals are to the Crown Court: s 67C(1), (2) (as so prospectively added).

14 Sums which are in the hands of an appropriate officer and are the proceeds of the realisation of property under the Proceeds of Crime Act 2002 s 67A must be applied as follows:

- 701 (1) first, they must be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under s 67D(2) by virtue of s 432 (see PARA 424) (s 67D(1), (2)(a) (as so prospectively added));
- 702 (2) second, they must be applied in making any payments directed by the magistrates' court or the Crown Court (s 67D(2)(b) (as so prospectively added)); and
- 703 (3) third, they must be paid to the appropriate designated officer (ie the designated officer for the magistrates' court which, by virtue of s 35 (see PARA 420), is responsible for enforcing the confiscation order as if it were a fine) on account of the amount payable under the confiscation order (s 67D(2)(c), (6) (as so prospectively added)).

If the amount payable under the confiscation order has been fully paid and any sums remain in the appropriate officer's hands, the appropriate officer must distribute them:

- 704 (a) among such persons who held (or hold) interests in the property represented by the proceeds as the magistrates' court or the Crown Court directs (s 67D(3)(a) (as so prospectively added)); and
- 705 (b) in such proportions as it directs (s 67D(3)(b) (as so prospectively added)).

Before making a direction under s 67D(3) the court must give persons who held (or hold) interests in the property a reasonable opportunity to make representations to it: s 67D(4) (as so prospectively added). If the magistrates' court has made a direction under s 67D(2)(b) or (3) in respect of the proceeds of realisation of any property, the Crown Court may not make a direction under either of those provisions in respect of the proceeds of realisation of that property; and vice versa: s 67D(5) (as so prospectively added).

15 If a magistrates' court makes an order under the Proceeds of Crime Act 2002 s 67A the court may determine an amount which may be recovered by the appropriate officer in respect of reasonable costs incurred in storing or insuring the property since it was seized or produced as mentioned in s 67A(1) (see the text and notes 1-5) or in realising the property: s 67B(1), (2) (prospectively added: see note 1). If the court makes such a determination the appropriate officer is entitled to payment of the amount under 55(4) (see PARA 449): s 67B(3) (as so prospectively added). A determination under s 67B may be made on the same occasion as the section 67A order or on any later occasion; and more than one determination may be made in relation to any case: s 67B(4) (as so prospectively added). An appropriate officer may appeal against a determination made by a magistrates' court under s 67B and a decision by a magistrates' court not to make such a determination: s 67C(4) (as so prospectively added). All such appeals are to the Crown Court: s 67C(4) (as so prospectively added).

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L. FINANCIAL INVESTIGATORS

452. Applications and appeals.

An accredited financial investigator:

- 1525 (1) must not make an application under the provisions relating to: the making, discharge and variation of restraint orders¹; the appointment and powers of management receivers²; or the discharge and variation of an order conferring a power on a receiver³;
- 1526 (2) must not bring an appeal (or further appeal) in respect of the making or refusal of a restraint order⁴, or of the making or refusal of an order for the appointment of a management receiver or an enforcement receiver or of an order conferring a power on such a receiver⁵,

unless he is one of the following or is authorised for these purposes by one of the following:

- 1527 (a) a police officer who is not below the rank of superintendent⁶;
- 1528 (b) an officer of Revenue and Customs who is not below such grade as is designated by the Commissioners for Her Majesty's Revenue and Customs as equivalent to that rank⁷;
- 1529 (c) an accredited financial investigator who falls within a specified description⁸.

If such an application is made or appeal brought by an accredited financial investigator, any subsequent step in the application or appeal or any further application or appeal relating to the same matter may be taken, made or brought by a different accredited financial investigator who falls within, or is authorised by someone within, heads (a) to (c) above⁹.

1 Ie under the Proceeds of Crime Act 2002 ss 41, 42 (see PARAS 424-425).

2 Ie under the Proceeds of Crime Act 2002 ss 48, 49 (see PARAS 437-438).

3 Proceeds of Crime Act 2002 s 68(1)(a). The reference in the text to the discharge and variation of an order conferring a power on a receiver is a reference to the discharge and variation of such an order under s 63 (see PARA 444).

4 Ie under the Proceeds of Crime Act 2002 ss 43, 44 (see PARA 426).

5 Proceeds of Crime Act 2002 s 68(1)(b). The reference in the text to the making or refusal of an order for the appointment of a management receiver or an enforcement receiver or of an order conferring a power on such a receiver or a Director's receiver is a reference to the making or refusal of such an order under ss 65, 66 (see PARA 447).

6 Proceeds of Crime Act 2002 s 68(2), (3)(a).

7 Proceeds of Crime Act 2002 s 68(3)(b) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (2), (7)).

8 Proceeds of Crime Act 2002 s 68(3)(c). The description referred to in the text is a description specified in an order made for these purposes by the Secretary of State under s 453 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1743).

9 Proceeds of Crime Act 2002 s 68(4). If: (1) an application for a restraint order is made by an accredited financial investigator; and (2) a court is required under s 58(6) (see PARA 428) to give the applicant for the order an opportunity to be heard, the court may give the opportunity to a different accredited financial investigator who falls within heads (a)-(c) in the text: s 68(5).

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M. COMMITTAL

453. Committal by magistrates' court.

Where a defendant¹ is convicted of an offence by a magistrates' court², and the prosecutor asks the court to commit the defendant to the Crown Court with a view to a confiscation order³ being considered⁴, the magistrates' court:

- 1530 (1) must commit the defendant to the Crown Court in respect of the offence⁵; and
- 1531 (2) may commit him to the Crown Court in respect of any other offence of a specified⁶ type⁷.

If such a committal is made in respect of an offence or offences, the provisions⁸ relating to the making of a confiscation order apply accordingly⁹ and the committal operates as a committal of the defendant to be dealt with¹⁰ by the Crown Court¹¹.

1 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

2 Proceeds of Crime Act 2002 s 70(1)(a).

3 As to the meaning of 'confiscation order' see PARA 399 note 1.

4 Proceeds of Crime Act 2002 s 70(1)(b). The reference in the text to a confiscation order being considered is a reference to an order being considered under s 6 (see PARA 391).

5 Proceeds of Crime Act 2002 s 70(2)(a). A committal under s 70 may be in custody or on bail: s 70(6).

6 Ie an offence falling within the Proceeds of Crime Act 2002 s 70(3). An offence falls within s 70(3) if: (1) the defendant has been convicted of it by the magistrates' court or any other court (s 70(3)(a)); and (2) the magistrates' court has power to deal with him in respect of it (s 70(3)(b)).

7 Proceeds of Crime Act 2002 s 70(2)(b).

8 Ie the Proceeds of Crime Act 2002 s 6 (see PARA 391).

9 Proceeds of Crime Act 2002 s 70(4)(a).

10 Ie in accordance with the Proceeds of Crime Act 2002 s 71 (see PARA 454).

11 Proceeds of Crime Act 2002 s 70(4)(b). If a committal is made under s 70 in respect of an offence for which (apart from s 70) the magistrates' court could have committed the defendant for sentence under the Powers of Criminal Courts (Sentencing) Act 2000 s 3(2) (offences triable either way: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1123) (or, as from a day to be appointed, under s 3B(2) (prospectively added) (committal of a child or young person: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1125)) the court must state whether it would have done so: Proceeds of Crime Act 2002 s 70(5) (prospectively amended by the Criminal Justice Act 2003 s 41, Sch 3 para 75(1), (4)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

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454. Sentencing by Crown Court.

If a defendant¹ is committed to the Crown Court² in respect of an offence or offences with a view to a confiscation order³ being made, the following provisions apply (whether or not the court proceeds under the provisions⁴ relating to making a confiscation order)⁵.

In the case of an offence in respect of which the magistrates' court has stated⁶ that it would have committed the defendant for sentence, the Crown Court must inquire into the circumstances of the case⁷ and may deal with the defendant in any way in which it could deal with him if he had just been convicted of the offence on indictment before it⁸. In the case of any other offence the Crown Court must inquire into the circumstances of the case⁹ and may deal with the case in any way in which the magistrates' court could deal with him if it had just convicted him of the offence¹⁰.

1 As to the meaning of 'defendant' for these purposes see PARA 391 note 1.

2 Ie under the Proceeds of Crime Act 2002 s 70 (see PARA 453).

3 As to the meaning of 'confiscation order' see PARA 399 note 1.

4 Ie under the Proceeds of Crime Act 2002 s 6 (see PARA 391).

5 Proceeds of Crime Act 2002 s 71(1).

6 Ie under the Proceeds of Crime Act 2002 s 70(5) (see PARA 453).

7 Proceeds of Crime Act 2002 s 71(2)(a).

8 Proceeds of Crime Act 2002 s 71(2)(b).

9 Proceeds of Crime Act 2002 s 71(3)(a).

10 Proceeds of Crime Act 2002 s 71(3)(b).

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N. COMPENSATION

455. Serious default.

If either of two sets of three conditions is satisfied the Crown Court may order the payment of such compensation as it believes is just¹.

The first set of conditions is that:

- 1532 (1) a criminal investigation² has been started with regard to an offence, and proceedings are not started³ for the offence⁴;
- 1533 (2) in the criminal investigation there has been serious default by a specified⁵ person⁶, and the investigation would not have continued if the default had not occurred⁷;
- 1534 (3) an application is made⁸ by a person who held realisable property⁹ and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order¹⁰.

The second set of conditions is that:

- 1535 (a) proceedings for an offence are started against a person and either they do not result in his conviction for the offence¹¹ or he is convicted of the offence but the conviction is quashed or he is pardoned in respect of it¹²;
- 1536 (b) in the criminal investigation with regard to the offence or in its prosecution there has been a serious default by a specified person¹³ and the proceedings would not have been started or continued if the default had not occurred¹⁴; and
- 1537 (c) an application is made by a person who held realisable property and has suffered loss in consequence of anything done in relation to it by or in pursuance of an order¹⁵.

Compensation¹⁶ is payable to the applicant¹⁷. It is payable only by specified bodies¹⁸.

1 Proceeds of Crime Act 2002 s 72(1).

2 As to the meaning of 'criminal investigation' see PARA 423 note 3.

3 As to when proceedings for an offence are 'started' see PARA 391 note 1.

4 Proceeds of Crime Act 2002 s 72(2). The offence referred to in s 72(2) may be one of a number of offences with regard to which the investigation is started: s 72(7).

5 I.e a person mentioned in the Proceeds of Crime Act 2002 s 72(9) (that is, a member of a police force, a member of the Crown Prosecution Service, a member of the Serious Fraud Office, a member of or person acting on behalf of the Revenue and Customs Prosecutions Office or an officer of Revenue and Customs): see note 17.

6 Proceeds of Crime Act 2002 s 72(4)(a).

7 Proceeds of Crime Act 2002 s 72(4)(b).

8 le under the Proceeds of Crime Act 2002 s 72. The application under s 72 must be in writing and may be supported by a witness statement: CrimPR 58.10(1), (2). The application and any witness statement must be lodged with the Crown Court: CrimPR 58.10(3).

The application and any witness statement must be served on: (1) the person alleged to be in default; and (2) the person by whom the compensation would be payable under the Proceeds of Crime Act 2002 s 72(9) (see the text and notes 15-17) (or, if the compensation is payable out of a police fund under s 72(9)(a), the chief officer of the police force concerned), at least seven days before the date fixed by the court for hearing the application, unless the Crown Court directs otherwise: CrimPR 58.10(4).

9 As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

10 Proceeds of Crime Act 2002 s 72(6). The reference in the text to an order is a reference to an order under Pt 2 (ss 6-91).

11 Proceeds of Crime Act 2002 s 72(3)(a). The offence referred to in s 72(3) may be one of a number of offences for which the proceedings are started: s 72(8).

12 Proceeds of Crime Act 2002 s 72(3)(b).

13 Proceeds of Crime Act 2002 s 72(5)(a). As to the specified person see notes 5, 17.

14 Proceeds of Crime Act 2002 s 72(5)(b).

15 Proceeds of Crime Act 2002 s 72(6). The reference in the text to an order is a reference to an order under Pt 2.

16 le under the Proceeds of Crime Act 2002 s 72.

17 See the Proceeds of Crime Act 2002 s 72(9); and note 17.

18 le:

706 (1) if the person in default was or was acting as a member of a police force, the compensation is payable out of the police fund from which the expenses of that force are met (s 72(9)(a));

707 (2) if the person in default was a member of the Crown Prosecution Service or was acting on its behalf, the compensation is payable by the Director of Public Prosecutions (s 72(9)(b));

708 (3) if the person in default was a member of the Serious Fraud Office, the compensation is payable by the Director of that Office (s 72(9)(c));

709 (4) if the person in default was a member of or acting on behalf of the Revenue and Customs Prosecutions Office, the compensation is payable by the Director of that Office (s 72(9)(d) (substituted by the Commissioners for Revenue and Customs Act 2005 s 50(6), Sch 4 para 97));

710 (5) if the person in default was an officer of Revenue and Customs, the compensation is payable by the Commissioners for Her Majesty's Revenue and Customs (Proceeds of Crime Act 2002 s 72(9)(e) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)));

711 (6) as from a day to be appointed, if the person in default was a member of staff of SOCA, the compensation is payable by SOCA (Proceeds of Crime Act 2002 s 72(9)(ba) (s 72(9)(ba), (f) prospectively added by the Policing and Crime Act 2009 s 61(1), (2): at the date at which this volume states the law no day had been appointed for the coming into force of this amendment)); and

712 (7) as from a day to be appointed, if the person in default was an accredited financial investigator and none of the above applies, the compensation is payable in accordance with the Proceeds of Crime Act 2002 s 302(7A)(a), (c) or (e) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2171) as the case may be (s 72(9)(f) (as so prospectively added)).

UPDATE

455 Serious default

NOTE 8--CrimPR 58.10 now Criminal Procedure Rules 2010, SI 2010/60, r 58.10.

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456. Order varied or discharged.

Where the court varies¹ a confiscation order² or discharges³ one⁴, and an application⁵ is made to the Crown Court by a person who held realisable property⁶ and has suffered loss as a result of the making of the order⁷, the court may order the payment of such compensation as it believes is just⁸. Such compensation is payable to the applicant⁹ by the Lord Chancellor¹⁰.

1 le under the Proceeds of Crime Act 2002 s 29 (see PARA 415).

2 As to the meaning of 'confiscation order' see PARA 399 note 1.

3 le under the Proceeds of Crime Act 2002 s 30 (see PARA 416).

4 Proceeds of Crime Act 2002 s 73(1)(a).

5 The application must be in writing and supported by a witness statement which must give details of: (1) the confiscation order made under the Proceeds of Crime Act 2002 s 28 (see PARA 414); (2) the variation or discharge of the confiscation order under s 29 or s 30 (see PARAS 415-416); (3) the realisable property to which the application relates; and (4) the loss suffered by the applicant as result of the confiscation order: CrimPR 58.11(1), (2). As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

The application and witness statement must be lodged with the Crown Court: CrimPR 58.11(3). The application and witness statement must be served on the prosecutor at least seven days before the date fixed by the court for hearing the application, unless the Crown Court specifies a shorter period: CrimPR 58.11(4).

6 As to when property is 'held' by a person see PARA 391 note 13.

7 Proceeds of Crime Act 2002 s 73(1)(b).

8 Proceeds of Crime Act 2002 s 73(2).

9 Proceeds of Crime Act 2002 s 73(3)(a).

10 Proceeds of Crime Act 2002 s 73(3)(b).

UPDATE

456 Order varied or discharged

NOTE 5--CrimPR 58.11 now Criminal Procedure Rules 2010, SI 2010/60, r 58.11.

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O. ENFORCEMENT ABROAD

457. Enforcement abroad.

The following provisions apply if:

- 1538 (1) any of the conditions¹ for the making of a restraint order² is satisfied³;
- 1539 (2) the prosecutor believes that realisable property⁴ is situated in a country or territory outside the United Kingdom⁵ (the receiving country)⁶; and
- 1540 (3) the prosecutor sends a request for assistance to the Secretary of State with a view to it being forwarded to the government of the receiving country⁷.

In a case where no confiscation order⁸ has been made, a request for assistance is a request to the government of the receiving country to secure that any person is prohibited from dealing with realisable property⁹.

In a case where a confiscation order has been made and has not been satisfied¹⁰, discharged or quashed, a request for assistance is a request to the government of the receiving country to secure that:

- 1541 (a) any person is prohibited from dealing with realisable property¹¹; and
- 1542 (b) realisable property is realised and the proceeds are applied in accordance with the law of the receiving country¹².

No request for assistance may be made for these purposes in a case where a confiscation order has been made and has been satisfied, discharged or quashed¹³.

If the Secretary of State believes it is appropriate to do so, he may forward the request for assistance to the government of the receiving country¹⁴.

1 le any of the conditions in the Proceeds of Crime Act 2002 s 40 (see PARA 423).

2 As to restraint orders see PARA 424.

3 Proceeds of Crime Act 2002 s 74(1)(a). Section 74 does not have effect where the power therein would otherwise be exercisable by virtue of a condition in s 40(2) or (3) (see PARA 423) being satisfied, and the offence with regard to which a criminal investigation has been started (s 40(2)(a)), or proceedings for which have been started but not concluded (s 40(3)(a)), was committed before 24 March 2003: see the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 5; and PARA 390. As to when proceedings for an offence are 'started' see PARA 391 note 1. As to when proceedings for an offence are 'concluded' see PARA 414 note 3.

4 As to the meaning of 'property' see PARA 391 note 13. As to the meaning of 'realisable property' see PARA 409 note 12.

5 As to the meaning of 'United Kingdom' see PARA 9 note 2.

6 Proceeds of Crime Act 2002 s 74(1)(b) (amended by the Serious Crime Act 2007 Sch 8 para 35(a), Sch 14).

7 Proceeds of Crime Act 2002 s 74(1)(c) (amended by the Serious Crime Act 2007 Sch 8 para 35(b), Sch 14).

8 As to the meaning of 'confiscation order' see PARA 399 note 1.

9 Proceeds of Crime Act 2002 s 74(2).

10 As to when a confiscation order is 'satisfied' see PARA 414 note 3.

11 Proceeds of Crime Act 2002 s 74(3)(a).

12 Proceeds of Crime Act 2002 s 74(3)(b). If property is realised in pursuance of a request under s 74(3), the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of realisation: s 74(6). A certificate purporting to be issued by or on behalf of the requested government is admissible as evidence of the facts it states if it states: (1) that property has been realised in pursuance of a request under s 74(3) (s 74(7)(a)); (2) the date of realisation (s 74(7)(b)); and (3) the proceeds of realisation (s 74(7)(c)).

If the proceeds of realisation made in pursuance of a request under s 74(3) are expressed in a currency other than sterling, they must be taken to be the sterling equivalent calculated in accordance with the rate of exchange prevailing at the end of the day of realisation: s 74(8).

13 Proceeds of Crime Act 2002 s 74(4).

14 Proceeds of Crime Act 2002 s 74(5).

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P. EXTERNAL REQUESTS AND ORDERS

458. External requests and orders.

Provision broadly corresponding with the provisions relating to restraint orders¹ and management receivers² has been made in relation to an external request³, and provision broadly corresponding with the provisions relating to enforcement receivers⁴ has been made in relation to an external order⁵.

1 See PARA 423 et seq.

2 See PARA 437 et seq.

3 As to the meaning of 'external request' see PARA 391 note 17.

4 See PARA 439 et seq.

5 See the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, SI 2005/3181; and PARAS 391 note 17, 424 note 5. As to the meaning of 'external order' see PARA 391 note 17. See *King v Director of Serious Fraud Office* [2009] UKHL 17, [2009] 2 All ER 223, [2009] 2 Cr App Rep 43.

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(ii) Confiscation Orders under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994

A. APPLICATION OF LEGISLATION

459. Scope of legislation.

The power to make a confiscation order under the Proceeds of Crime Act 2002¹ applies only in respect of an offence committed on or after 24 March 2003². The making of confiscation orders in relation to offences committed before that date continues to be governed by repealed provisions of the Criminal Justice Act 1988³ or, where applicable, the Drug Trafficking Act 1994⁴, which are specifically saved for the purpose⁵.

1 See the Proceeds of Crime Act 2002 Pt 2 (ss 6-91); and PARA 391 et seq.

2 Ie the date on which the Proceeds of Crime Act 2002 Pt 2 was brought into force by the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 2, Schedule. Thus the Proceeds of Crime Act 2002 applies only if all the offences on an indictment were committed on or after 24 March 2003 (the corollary of this being that the Proceeds of Crime Act 2002 does not apply, but the Criminal Justice Act 1988 (see the text and note 3) does, if any of the offences on the indictment were committed before 24 March 2003), and an offence committed over a period of time commencing before 24 March 2003 is treated as having been committed before that date: see the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, arts 3, 7 (art 7 substituted by SI 2003/531); and see also (in connection with continuing offences or a sequence of offences commenced before 24 March 2003) *R v Simpson* [2003] EWCA Crim 1499, [2004] QB 118, [2003] 2 Cr App Rep 545; *R v Aslam* [2004] EWCA Crim 2801, [2005] 1 Cr App Rep (S) 660, [2005] Crim LR 145; *R v Stapleton* [2008] EWCA Crim 1308, [2009] 1 Cr App Rep (S) 209, [2008] Crim LR 813; *R v Moulden* [2008] EWCA Crim 2561, [2009] 2 All ER 912, [2009] 2 Cr App Rep (S) 84 (if offences are charged in separate indictments each is a separate proceedings for the purposes of confiscation).

3 Ie the Criminal Justice Act 1988 Pt VI (ss 71-103) (repealed by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2): see PARA 460 et seq.

4 Ie the Drug Trafficking Act 1994 Pt 1 (ss 1-41) (repealed by the Proceeds of Crime Act 2002 Sch 11 para 25, Sch 12, and replaced by Pt 2): see PARA 474.

5 See the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a), (e).

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B. CONFISCATION UNDER THE CRIMINAL JUSTICE ACT 1988

460. Power to make confiscation orders.

Where an offender is convicted, in any proceedings before the Crown Court or a magistrates' court, of an offence of a relevant description¹ committed before 24 March 2003², it is the duty of the court³, unless there are outstanding civil proceedings against the defendant⁴, to determine whether the offender has benefited from any relevant criminal conduct⁵ and then, if it so determines, to determine⁶ the amount to be recovered and make a confiscation order ordering the offender to pay that amount⁷. Where a court makes a confiscation order against a defendant in any proceedings, it is its duty, in respect of any offence of which he is convicted in those proceedings, to take account of the order before imposing any fine on him⁸, making any order (other than a compensation order⁹) involving any payment by him¹⁰, or making a forfeiture¹¹ or deprivation¹² order against him¹³, but subject to that must leave the order out of account in determining the appropriate sentence or other manner of dealing with him¹⁴.

¹ I.e., in general, the offences listed in the Proceeds of Crime Act 2002 Sch 4 (as having effect on 23 March 2003: see note 2) and any other indictable offence other than a drug trafficking offence or an offence under the Terrorism Act 2000 ss 15-18: see the Criminal Justice Act 1988 s 71(1E), (9)(c) (s 71(1) substituted, s 71(1A)-(1E) added, by the Proceeds of Crime Act 1995 s 1(2); Criminal Justice Act 1988 s (9)(c) amended by the Terrorism Act 2000 Sch 15 para 6; repealed (see note 2)). Special provision is made where a course of criminal conduct (i.e. where the defendant has been convicted of more than one applicable offence): see the Criminal Justice Act 1988 s 72AA (added by the Proceeds of Crime Act 1995 s 2; repealed (see note 2)).

² The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

³ I.e. provided the prosecutor has given written notice to the court that he considers that it would be appropriate for the court to proceed under the Criminal Justice Act 1988 s 71 (s 71(1)(a) (repealed: see note 2)) or if the court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed (s 71(1)(b) (repealed)).

⁴ See the Criminal Justice Act 1988 s 71(1C) (as added and repealed: see notes 1, 2), which makes the court's duty to make an order under s 71 optional if there are outstanding civil proceedings. A person against whom proceedings have been instituted for an offence to which Pt VI applies is referred to (whether or not he has been convicted) as the 'defendant': see s 71(9)(d) (repealed).

⁵ See the Criminal Justice Act 1988 s 71(1), (1A) (as substituted, added and repealed: see notes 1, 2). Provision is made for the postponement of such determination where the court requires further information: see s 72A (added by the Criminal Justice Act 1993 s 28; amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 36; the Proceeds of Crime Act 1995 Sch 1 para 2, Sch 2; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 107; repealed (see note 2)); and *R v Soneji* [2005] UKHL 49, [2006] 1 AC 340, [2006] 1 Cr App Rep (S) 430 (reviewing the case law in this area).

⁶ I.e. in accordance with the Criminal Justice Act 1988 s 71(6) (amended by the Proceeds of Crime Act 1995 s 1(3); repealed (see note 2)). Provision is made for the postponement of such determination where the court requires further information: see the Criminal Justice Act 1988 s 72A (as added, amended and repealed: see notes 2, 5).

The benefit gained is the total value of the property or pecuniary advantage gained, not the particular defendant's net profit; and where two or more defendants obtain property jointly, each is regarded as obtaining the whole of it: see *R v May* [2008] UKHL 28, [2008] 1 AC 1028, [2008] 4 All ER 97, and *R v Green* [2008] UKHL 30, [2008] 1 AC 1053, [2008] 4 All ER 119 (cited in *R v Sivaraman* [2008] EWCA Crim 1736, [2009] 1 Cr App Rep (S) 469, [2008] All ER (D) 447 (Jul); reviewed in *R v Allpress* [2009] EWCA Crim 8, [2009] 2 Cr App Rep (S) 399, [2009] All ER (D) 126 (Jan)). As to the calculation of the value of benefit to an individual where the criminal conduct was undertaken via a company see *R v Seager* [2009] EWCA Crim 1303, [2009] Crim LR 816, [2009] All ER (D) 283 (Jun) (reviewing *R v May*; *R v Green*; *Crown Prosecution Service v Jennings* [2008] UKHL 29, [2008] 1 AC 1046, [2008] 4 All ER 113).

A person obtains a pecuniary advantage if (among other things) he evades a liability to which he is personally subject: see *R v May* [2008] UKHL 28, [2008] 1 AC 1028, [2008] 4 All ER 97 (cited in *R v Sivaraman* [2008] EWCA Crim 1736, [2009] 1 Cr App Rep (S) 469, [2009] 2 Cr App Rep (S) 399, [2008] All ER (D) 447 (Jul); reviewed in *R v Allpress* [2009] EWCA Crim 8, [2009] All ER (D) 126 (Jan)).

7 See the Criminal Justice Act 1988 s 71(1B), (9)(a) (as added and repealed: see notes 1, 2). 'Relevant criminal conduct', in relation to a person convicted of an offence in any proceedings before a court, means (subject to s 72AA(6)) that offence taken together with any other offences of a relevant description which are either offences of which he is convicted in the same proceedings, or offences which the court will be taking into consideration in determining his sentence for the offence in question: s 71(1D) (as so added and repealed). A person benefits from an offence if he obtains property as a result of or in connection with its commission, and his benefit is the value of the property so obtained: s 71(4) (as so added and repealed). For these purposes 'property' includes money and all other property, real or personal, heritable or movable, including things in action and other intangible or incorporeal property, wherever situated: s 102 (1), (3) (as so added and repealed). Provision is made for determining what is 'realisable property' and the value of property: see s 74 (amended by the Prevention of Terrorism (Temporary Provisions) Act 1989 Sch 8 para 10; the Criminal Justice (Terrorism and Conspiracy) Act 1998 Sch 1 para 1, Sch 2 Pt 1; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 108; and the Terrorism Act 2000 Sch 15 para 6; repealed (see note 2)). Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for these purposes as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage: s 71(5) (repealed). For these purposes, references to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection: s 102(5) (repealed). Property is held by any person if he holds any interest in it (s 102(6), (7) (repealed)); and 'interest', in relation to property, includes right (s 102(1) (repealed)). References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985, or liquidator: Criminal Justice Act 1988 s 102(6), (8) (repealed).

8 See the Criminal Justice Act 1988 s 72(5)(a) (repealed: see note 2).

9 Ie an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130: see PARA 375.

10 See the Criminal Justice Act 1988 s 72(5)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 106; repealed (see note 2)).

11 Ie under the Misuse of Drugs Act 1971 s 27: see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283.

12 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 143: see PARA 481.

13 See the Criminal Justice Act 1988 s 72(5)(c) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 106; repealed (see note 2)).

14 See the Criminal Justice Act 1988 s 72(5). No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way restricts the court by reason only of the making of a confiscation order from dealing with an offender in any way it considers appropriate in respect of an offence to which Pt VI applies: see s 72(6) (repealed). Where a court makes both a confiscation order and a compensation order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 against the same person in the same proceedings and it appears to the court that he will not have sufficient means to satisfy both the orders in full, it must direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order: Criminal Justice Act 1988 s 72(7) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 106; repealed (see note 2)).

UPDATE

460 Power to make confiscation orders

NOTE 6--*Seager*, cited, reported at [2010] 1 WLR 815.

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461. Statements and information.

Where a person has been convicted of an offence of a relevant description¹ before 24 March 2003² the prosecutor must³ tender to the court a statement as to any matters relevant to determining whether the defendant has benefited from any relevant criminal conduct⁴ or to an assessment of the value of the defendant's benefit from that conduct⁵. Further such statements may be tendered by the prosecutor subject to the court's discretion⁶. Where any such statement has been tendered to any court and the defendant accepts to any extent any allegation in the statement the court may, for the purpose of determining whether the defendant has benefited from any relevant criminal conduct or of assessing the value of the defendant's benefit from such conduct, treat his acceptance as conclusive of the matters to which it relates⁷. If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made⁸ it may issue a certificate giving the court's opinion as to the matters concerned and must do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from any relevant criminal conduct⁹.

The court may also¹⁰ order the defendant to give it such information as it may specify¹¹ and if the defendant fails without reasonable excuse to comply with such an order the court may draw such inference from that failure as it considers appropriate¹².

1 See PARA 460 note 1.

2 The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

3 Ie within such period as the court may direct and provided either that the prosecutor has given written notice to the court for the purposes of the Criminal Justice Act 1988 s 71(1)(a) (see PARA 460) or the court is proceeding in pursuance of s 71(1)(b) (see PARA 460) and requires a statement under these provisions from the prosecutor: see s 73(1), (1A) (s 73(1) substituted, ss 73(1A)-(1C), (7), 73A added, s 73(2), (6) amended, by the Proceeds of Crime Act 1995 s 3; Criminal Justice Act 1988 s 73 repealed (see note 2)). Where the court has given a direction under s 73 it may at any time vary the direction by giving a further direction: s 73(7) (as so added and repealed).

4 See the Criminal Justice Act 1988 s 73(1A)(a) (as added and repealed: see notes 2, 3). As to the 'defendant' see PARA 460 note 4. As to criminal conduct, benefit etc see PARA 460 note 7. Additional matters may be included where the prosecution establishes a course of criminal conduct: see s 73(1A)(a) (as so added and repealed).

5 See the Criminal Justice Act 1988 s 73(1A)(b) (as added and repealed: see notes 2, 3).

6 See the Criminal Justice Act 1988 s 73(1B) (as added and repealed: see notes 2, 3).

7 See the Criminal Justice Act 1988 s 73(1C) (as added and repealed: see notes 2, 3). Where a statement is tendered by the prosecutor under these provisions and the court is satisfied that a copy of that statement has been served on the defendant, the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on: see s 73(2) (as so amended and repealed). Allegations may be accepted either orally or in

writing: see s 73(5) (repealed). Failure to comply with this requirement amounts to acceptance by the defendant: see s 73(3) (repealed).

8 le whether by an acceptance under the Criminal Justice Act 1988 s 73 or otherwise.

9 See the Criminal Justice Act 1988 s 73(6) (as amended and repealed: see notes 2, 3).

10 le at any time and where a person has been convicted of an offence of a relevant description and the prosecutor has given written notice to the court for the purposes of the Criminal Justice Act 1988 s 71(1)(a) or the court is proceeding in pursuance of s 71(1)(b) or is considering whether so to proceed: see s 73A(1), (2) (as added and repealed: see notes 2, 3).

11 See the Criminal Justice Act 1988 s 73A(2) (as added and repealed: see notes 2, 3). Provision is made as to the content of such orders: see s 73A(3), (4) (as so added and repealed).

12 See the Criminal Justice Act 1988 s 73A(5) (as added and repealed: see notes 2, 3).

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462. Variation of confiscation orders.

If, on an application by the defendant¹ or by the receiver² in respect of a confiscation order³ made in respect of an offence committed before 24 March 2003⁴ the High Court is satisfied⁵ that the realisable property⁶ is inadequate for the payment of any amount remaining to be recovered under the order, the court must issue a certificate to that effect, giving its reasons⁷. The person who applied for the certificate may then apply for the amount to be recovered under the order to be reduced accordingly⁸, and the court must make the appropriate adjustments⁹.

1 As to the 'defendant' see PARA 460 note 4.

2 Ie by a receiver appointed under the Criminal Justice Act 1988 ss 77-80 (see PARAS 469-471) or in pursuance of a charging order (see PARA 470).

3 See PARA 460.

4 The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

5 Matters which the court must take into account are specified: see the Criminal Justice Act 1988 s 83(2) (repealed: see note 4).

6 As to the meaning of 'property' see PARA 460 note 7.

7 See the Criminal Justice Act 1988 s 83(1) (s 83(1), (3) amended, s 83(6) added, by the Proceeds of Crime Act 1995 s 10; Criminal Justice Act 1988 s 83 repealed (see note 4)).

8 See the Criminal Justice Act 1988 s 83(3) (as amended and repealed: see notes 4, 7).

9 See the Criminal Justice Act 1988 s 83(4), (5) (s 83(4) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 113; Criminal Justice Act 1988 s 83 repealed (see note 4)).

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463. Registration of external confiscation orders.

On an application made by or on behalf of the government of a designated country¹, the High Court may register an external confiscation order² made there if:

- 1543 (1) it is satisfied that at the time of registration the order is in force and not subject to appeal³;
- 1544 (2) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them⁴; and
- 1545 (3) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice⁵.

The High Court must cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means⁶.

¹ I.e. a country or territory outside the United Kingdom designated by an Order in Council made by Her Majesty: see the Criminal Justice Act 1988 s 96(1)(a). The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

² I.e. an order made by a court in a designated country for the purpose of recovering property obtained as a result of or in connection with conduct corresponding to an offence to which the Criminal Justice Act 1988 Pt VI applies or the value of property so obtained, or of depriving a person of a pecuniary advantage so obtained: see s 96(2) (repealed: see note 1).

³ See the Criminal Justice Act 1988 s 97(1)(a) (repealed: see note 1). For these purposes 'appeal' includes any proceedings by way of discharging or setting aside a judgment and an application for a new trial or a stay of execution: see s 97(2) (repealed: see note 1).

⁴ See the Criminal Justice Act 1988 s 97(1)(b) (repealed: see note 1).

⁵ See the Criminal Justice Act 1988 s 97(1)(c) (repealed: see note 1). As to the enforcement of external orders see ss 94-96 (repealed).

⁶ See the Criminal Justice Act 1988 s 97(3) (repealed: see note 1).

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464. Review of cases where proceeds of crime not assessed.

If a person has been convicted of an offence of a relevant description¹ committed before 24 March 2003² but proceedings for a confiscation order³ were not initiated⁴ the prosecutor may, if he has new evidence⁵, apply to the court for it to consider the evidence⁶, and the court must⁷ commence proceedings⁸ for the making of a confiscation order⁹. The court has a power, rather than being under a duty, to make a confiscation order in these circumstances¹⁰, and must have regard to all the circumstances of the case¹¹.

No application may be entertained by the court under these provisions if it is made after the end of the period of six years beginning with the date of conviction¹².

¹ See PARA 460 note 1.

² The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

³ See PARA 460.

⁴ Ie the prosecutor did not give written notice for the purposes of the Criminal Justice Act 1988 s 71(1)(a) and a determination was made for the purposes of s 71(1)(b) not to proceed under s 71 or no determination was made for those purposes: see s 74A(1)(b), (c) (s 74A added by the Proceeds of Crime Act 1995 s 5; repealed (see note 2)).

⁵ Ie if the prosecutor has evidence which, at the date of conviction or, if later, when any determination not to proceed under the Criminal Justice Act 1988 s 71 was made, was not available to the prosecutor (and, accordingly, was not considered by the court) but which the prosecutor believes would have led the court to determine, if the prosecutor had given written notice for the purposes of s 71(1)(a), and the evidence had been considered by the court, that the defendant had benefited from relevant criminal conduct: see s 74A(2) (as added and repealed: see notes 2, 4). As to the 'defendant' see PARA 460 note 4. As to criminal conduct, benefit etc see PARA 460 note 7.

⁶ See the Criminal Justice Act 1988 s 74A(1)(a), (2) (as added and repealed: see notes 2, 4).

⁷ Ie if, having considered the evidence, the court is satisfied that it is appropriate to do so: see the Criminal Justice Act 1988 s 74A(3) (as added and repealed: see notes 2, 4).

⁸ Ie the court must proceed under the Criminal Justice Act 1988 s 71 (see PARA 460) as if it were doing so before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct, and s 72A (see PARA 460) applies accordingly: see s 74A(3) (as added and repealed: see notes 2, 4).

⁹ See the Criminal Justice Act 1988 s 74A(3) (as added and repealed: see notes 2, 4). Sections 71, 72AA, 73, 73A (see PARAS 460, 461) are applied with modifications: see s 74A(5)(a), (c), (8), (9), (11) (as so added and repealed).

¹⁰ See the Criminal Justice Act 1988 s 74A(5)(b) (as added and repealed: see notes 2, 4).

¹¹ See the Criminal Justice Act 1988 s 74A(4) (as added and repealed: see notes 2, 4). The court must have regard in particular to any fine imposed on the defendant in respect of any relevant criminal conduct and any order made in connection with any such conduct under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (compensation orders: see PARA 375) (see the Criminal Justice Act 1988 s 74A(6) (as so added and repealed;

amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 109)), and in making any determination under or for the purposes of the Criminal Justice Act 1988 s 74A may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the time when he was sentenced or otherwise dealt with in the case in question (s 74A(7) (as so added and repealed)).

12 See the Criminal Justice Act 1988 s 74A(10) (as added and repealed: see notes 2, 4). 'Date of conviction' means either the date on which the defendant was convicted of the offence in question or, where he was convicted of that offence and one or more other offences in the same proceedings and those convictions were not all on the same date, the date of the latest of those convictions: s 74A(12) (as so added and repealed).

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465. Revision of assessment of proceeds of crime.

If there has been a determination¹ that the defendant² in any case had not benefited from any relevant criminal conduct³ pre-dating 24 March 2003⁴ the prosecutor may, if he has new evidence⁵, apply to the court for it to consider that evidence⁶, and the court must⁷ commence proceedings⁸ for the making of a fresh determination and may make a new confiscation order requiring the payment of such sum as it thinks fit⁹.

No application may be entertained by the court under these provisions if it is made after the end of the period of six years beginning with the date of conviction¹⁰.

1 Ie under the Criminal Justice Act 1988 s 71(1A): see PARA 460.

2 As to the 'defendant' see PARA 460 note 4.

3 As to criminal conduct, benefit etc see PARA 460 note 7.

4 The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

5 Ie if the prosecutor has evidence which was not considered by the court which made the original determination but which the prosecutor believes would have led that court (if it had been considered) to determine that the defendant had benefited from the relevant criminal conduct: Criminal Justice Act 1988 s 74B(2) (s 74B added by the Proceeds of Crime Act 2005 s 6; repealed (see note 4)).

6 See the Criminal Justice Act 1988 s 74B(1), (2) (as added and repealed: see notes 4, 5).

7 Ie if, having considered the evidence, the court is satisfied that if that evidence had been available to it, it would have determined that the defendant had benefited from relevant criminal conduct: see the Criminal Justice Act 1988 s 74B(3) (as added and repealed: see notes 4, 5).

8 Ie the court must proceed as if it were proceeding under the Criminal Justice Act 1988 s 71 (see PARA 460) before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct to make a fresh determination of whether the defendant has benefited from any relevant criminal conduct and then to make such a determination as is mentioned in s 71(1B)(a): see s 74B(3)(a) (as added and repealed: see notes 4, 5).

9 See the Criminal Justice Act 1988 s 74B(3)(b) (as added and repealed: see notes 4, 5). Sections 72A, 72AA, 73, 73A (see PARAS 460, 461) are applied with modifications: see s 74B(6), (7), (9), (10) (as so added and repealed). The court may not make any order for the payment of a sum which is more than the amount determined under s 71(1B)(a): s 74B(4) (as so added and repealed). In making any determination under or for the purposes of s 74B(3) the relevant court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination: s 74B(5) (as so added and repealed).

10 See the Criminal Justice Act 1988 s 74B(8) (as added and repealed: see notes 4, 5). As to the date of conviction see PARA 464 note 12 (definition applied by s 74B(11) (as so added and repealed)).

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466. Revision of assessment of amount to be recovered.

If in the case of a person convicted of an offence committed before 24 March 2003¹ there has been a determination² of any sum required to be paid in his case under any confiscation order³ and the prosecutor is of the opinion that the value of any benefit to the defendant from any relevant criminal conduct was greater than the value at which that benefit was assessed by the court on the current determination, the prosecutor may apply to the court for the evidence on which the prosecutor has formed his opinion to be considered by the court⁴ and the court may be required⁵ to make⁶ a fresh determination⁷ and may increase⁸ the amount to be recovered and vary the confiscation order accordingly⁹.

No application may be entertained by the court under these provisions if it is made after the end of the period of six years beginning with the date of conviction¹⁰.

1 The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

2 Ie a determination under the Criminal Justice Act 1988 Pt VI: see PARA 460 et seq.

3 See the Criminal Justice Act 1988 s 74C(1) (s 74C added by the Proceeds of Crime Act 1995 s 7; repealed (see note 1)). As to the making of a confiscation order see PARA 460.

4 See the Criminal Justice Act 1988 s 74C(2) (as added and repealed: see notes 1, 3). As to the 'defendant' see PARA 460 note 4. As to criminal conduct, benefit etc see PARA 460 note 7.

5 Ie if, having considered the evidence, the court is satisfied that the value of the benefit from any relevant criminal conduct is greater than the value so assessed by the court (whether because its real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased): see the Criminal Justice Act 1988 s 74C(3) (as added and repealed: see notes 1, 3).

6 Ie as if the court were proceeding under the Criminal Justice Act 1988 s 71 before sentencing or otherwise dealing with the defendant in respect of any relevant criminal conduct: see the Criminal Justice Act 1988 s 74C(3)(a) (as added and repealed: see notes 1, 3).

7 See the Criminal Justice Act 1988 s 74C(3)(a) (as added and repealed: see notes 1, 3). The fresh determination is of the amount by which the defendant has benefited from relevant criminal conduct and the amount appearing to be the amount that might be realised at the time of the fresh determination: see s 74C(3)(a) (as added and repealed). Where the court is under a duty to make a fresh determination for the purposes of s 74C(3)(a) and the case in issue is a case to which s 72AA (see PARA 460) applies the court does not have power, in determining any amounts for those purposes, to make any of the assumptions specified in s 72AA(4) in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question: see s 74C(4) (as so added and repealed). In making any determination under or for the purposes of s 74C(3) the court may take into account, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct, any payments or other rewards which were not received by him until after the making of the original determination: see s 74C(6) (as so added and repealed).

8 Ie to such extent as the court thinks just in all the circumstances of the case: see the Criminal Justice Act 1988 s 74C(3)(b) (as added and repealed: see notes 1, 3).

9 See the Criminal Justice Act 1988 s 74C(3)(b) (as added and repealed: see notes 1, 3). The court may not, in exercise of the power conferred by s 74C(3)(b), vary any order so as to make it an order requiring the payment of any sum which is more than the lesser of the two amounts determined in pursuance of s 74C(3)(a): see s 74C(5) (as so added and repealed). Sections 74C(7), (8) (as so added and repealed; amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 110) make further provision in connection with variation, and the Criminal Justice Act 1988 ss 72A, 73, 73A apply with modifications (see s 74C(10), (11) (as so added and repealed)).

10 See the Criminal Justice Act 1988 s 74C(9) (as added and repealed: see notes 1, 3). As to the date of conviction see PARA 464 note 12 (definition applied by s 74C(12) (as so added and repealed)).

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467. Application of procedure for enforcing fines.

Where the court orders the defendant¹ to pay an amount under a confiscation order² made in respect of an offence or offences committed before 24 March 2003³ the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 relating to the powers of the court in relation to fines and the enforcement thereof⁴, and associated legislation, has effect as if the amount the defendant is ordered to pay were a fine imposed on him by the court⁵. Provision is also made in connection with the payment of interest on unpaid sums⁶.

1 As to the 'defendant' see PARA 460 note 4.

2 As to the making of a confiscation order see PARA 460.

3 The Criminal Justice Act 1988 Pt VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

4 Ie the Powers of Criminal Courts (Sentencing) Act 2000 ss 139(1)-(4), 140(1)-(3): see PARAS 139, 159, 160.

5 See the Criminal Justice Act 1988 s 75 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 111; the Criminal Justice and Court Service Act 2000 Sch 8; the Proceeds of Crime Act 1995 s 8(1); repealed (see note 3)).

6 See the Criminal Justice Act 1988 s 75A (added by the Proceeds of Crime Act 1995 s 9; amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 112; repealed (see note 3)).

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468. Cases in which restraint orders and charging orders may be made.

The powers conferred on the High Court to make restraint orders¹ and charging orders² are exercisable where:

- 1546 (1) proceedings have been instituted³ in England and Wales against any person for a pre-24 March 2003⁴ offence⁵;
- 1547 (2) the proceedings have not been concluded or (if they have) an application for the reconsideration of the defendant's⁶ case has been made⁷ and not concluded⁸;
- 1548 (3) the court is satisfied either that there is reasonable cause to believe that the court will make a fresh determination as to the amounts payable under the order⁹ or that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence of a relevant description from which he may be, or has been, shown to have benefited¹⁰;
- 1549 (4) the court is satisfied that a person is to be charged (whether by the laying of an information or otherwise) with a relevant offence¹¹ or that an application for reconsideration¹² is to be made¹³; and
- 1550 (5) the court is satisfied that the making or variation of a confiscation order¹⁴ may result from proceedings for that offence or, as the case may be, from the application¹⁵.

However the court may not exercise those powers by virtue of heads (1) to (3) above if it is satisfied that there has been undue delay in continuing the proceedings or application in question¹⁶ or that the person who appears to the court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application does not intend to proceed with it¹⁷.

1 le under the Criminal Justice Act 1988 s 77(1): see PARA 469. Provision for the modification of the Criminal Justice Act 1988 Pt VI (ss 71-103) in these circumstances is made: see s 76(3), (4) (s 76(1), (2) substituted, s 76(1A) added, s 76(4) amended, by the Proceeds of Crime Act 1995 s 8; repealed (see note 4))

2 le under the Criminal Justice Act 1988 s 78(1): see PARA 470. See note 1.

3 As to when proceedings for an offence are instituted see the Criminal Justice Act 1988 s 102(11) (repealed: see note 4).

4 The Criminal Justice Act 1988 Pt VI was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

5 See the Criminal Justice Act 1988 s 76(1)(a) (as substituted and repealed: see notes 1, 4)). As to the offences to which the Criminal Justice Act 1988 applies see PARA 460.

6 As to the 'defendant' see PARA 460 note 4.

7 le an application under the Criminal Justice Act 1988 s 74A (review of cases where proceeds of crime not assessed: see PARA 464), s 74B (revision of assessment of proceeds of crime: see PARA 465) or s 74C (revision of assessment of amount to be recovered: see PARA 466).

8 See the Criminal Justice Act 1988 s 76(1)(b) (as substituted and repealed: see notes 1, 4).

9 le the court is satisfied, in a case where there is an application under the Criminal Justice Act 1988 s 74C, that the court will be satisfied as mentioned in s 74C(3) (see PARA 466).

10 See the Criminal Justice Act 1988 s 76(1)(c) (as substituted and repealed: see notes 1, 4). As to criminal conduct, benefit etc see PARA 460 note 7.

11 See note 5.

12 See note 7.

13 See the Criminal Justice Act 1988 s 76(2)(a) (as substituted and repealed: see notes 1, 4).

14 As to the making of a confiscation order see PARA 460; as to variation see PARA 462.

15 See the Criminal Justice Act 1988 s 76(2)(b) (as substituted and repealed: see notes 1, 4).

16 See the Criminal Justice Act 1988 s 76(1A)(a) (as added and repealed: see notes 1, 4).

17 See the Criminal Justice Act 1988 s 76(1A)(b) (as added and repealed: see notes 1, 4).

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469. Orders of the High Court.

The High Court¹ may by order (a 'restraint order') prohibit any person from dealing² with any realisable property³, subject to such conditions and exceptions as may be specified in the order⁴. A restraint order may apply to all realisable property held by a specified person, whether the property is described in the order or not, and to realisable property held by a specified person, being property transferred to him after the making of the order⁵. A restraint order may be discharged or varied in relation to any property and must be discharged on the conclusion of the proceedings or application in question⁶. An application for the discharge or variation of such an order may be made by any person affected by it⁷.

These provisions do not have effect in relation to any property for the time being subject to a charging order⁸. A restraint order may be made only on an application by the prosecutor⁹, may be made on a without notice application to a judge in chambers¹⁰, and must provide for notice to be given to persons affected by the order¹¹.

Where the High Court has made a restraint order, the court may at any time appoint a receiver¹² to take possession of any realisable property and, in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed¹³. The court may require any person having possession of property in respect of which a receiver is so appointed to give possession of it to the receiver¹⁴.

1 Provision is made for the exercise of the powers of the High Court under the Criminal Justice Act 1988 ss 77-81: see s 82 (repealed: see note 2).

2 For these purposes, dealing with property held by any person includes, without prejudice to the generality of the expression: (1) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and (2) removing the property from Great Britain: Criminal Justice Act 1988 s 77(9). Part VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

3 As to property see PARA 460 note 7. Provision is made for the seizure of property when a restraint order has been made: see the Criminal Justice Act 1988 s 77(10), (11) (repealed: see note 2).

4 See the Criminal Justice Act 1988 s 77(1) (repealed: see note 2). Without prejudice to the generality of s 77(1) a restraint order may make such provision as the court thinks fit for living expenses and legal expenses: see s 77(2) (repealed). Provision is made for the registration of restraint orders as land charges (see s 77(12), (13) (repealed)), in connection with the liability of insolvency practitioners seizing or disposing of property subject to restraint orders (see s 87 (repealed)), and in connection with the realisation of property in the hands of bankrupts or insolvent companies (see s 84 (amended by the Housing Act 1988 Sch 17 Pt 1; the Proceeds of Crime Act 1995 s 8(7); repealed) and the Criminal Justice Act 1988 s 86 (repealed)).

5 See the Criminal Justice Act 1988 s 77(3) (repealed: see note 2).

6 See the Criminal Justice Act 1988 s 77(6) (amended by the Proceeds of Crime Act 1995 s 8(4); repealed (see note 2)).

7 See the Criminal Justice Act 1988 s 77(7) (repealed: see note 2).

8 See the Criminal Justice Act 1988 s 77(4) (repealed: see note 2). As to charging orders see PARA 470.

9 See the Criminal Justice Act 1988 s 77(5)(a) (repealed: see note 2).

10 See the Criminal Justice Act 1988 s 77(5)(b) (repealed: see note 2).

11 See the Criminal Justice Act 1988 s 77(5)(c) (repealed: see note 2).

12 Provision is made for the exercise of the powers of a receiver under the Criminal Justice Act 1988 ss 77-81: see ss 82, 88 (repealed: see note 2).

13 See the Criminal Justice Act 1988 s 77(8) (repealed: see note 2). This is subject to such exceptions and conditions as may be specified by the court: see s 77(8) (repealed). Provision is made for the order of priority in which sums in the hands of a receiver are to be applied pursuant to the satisfaction of a confiscation order: see s 81 (amended by the Justices of the Peace Act 1997 Sch 5 para 23; the Access to Justice Act 1999 Sch 13 paras 136, 139, Sch 15 Pt V; SI 1992/709; repealed (see note 2)).

14 See the Criminal Justice Act 1988 s 77(8) (repealed: see note 2).

UPDATE

469 Orders of the High Court

NOTE 12--Where the beneficial interest regarding a property is still to be determined, a court has jurisdiction to make a management receivership order over the property on the basis that such property is realisable property: *Revenue and Customs Prosecutions Office v Pigott, in the matter of the Criminal Justice Act 1988* [2010] EWCA Civ 285, [2010] All ER (D) 172 (Mar).

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470. Charging orders.

The High Court¹ may make a charging order² on realisable property³ for securing the payment to the Crown:

- 1551 (1) where a confiscation order⁴ has not been made, of an amount equal to the value from time to time of the property charged⁵; and
- 1552 (2) in any other case, of an amount not exceeding the amount payable under the confiscation order⁶.

A charging order may be made only on an application by the prosecutor⁷, may be made on a without notice application to a judge in chambers⁸, must provide for notice to be given to persons affected by the order⁹ and may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this provision, such conditions as it thinks fit as to the time when the charge is to become effective¹⁰.

The court may at any time make an order discharging or varying a charging order and must make an order discharging it on the conclusion of the proceedings or application in question or the payment into court of the amount payment of which is secured by the charge, whichever of these first occurs¹¹.

1 Provision is made for the exercise of the powers of the High Court under the Criminal Justice Act 1988 ss 77-81: see s 82 (repealed: see note 2).

2 For these purposes, a charging order is an order made under the Criminal Justice Act 1988 s 78 (see the text and notes 3-11) imposing on any such realisable property as may be specified in the order a charge for securing payment of money to the Crown: see s 78(2). As to property see PARA 460 note 7. Part VI (ss 71-103) was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

Provision is made for the registration of restraint orders as land charges: see s 79(1)-(4) (repealed).

3 Detailed provision is made in connection with the charging of beneficial interests and trust property: see the Criminal Justice Act 1988 ss 78(4)-(6), 79(5), (6) (repealed: see note 2).

4 As to the making of a confiscation order see PARA 460.

5 As to the amount payable under a confiscation order see PARA 461.

6 See the Criminal Justice Act 1988 s 78(1)(b) (repealed: see note 2).

7 See the Criminal Justice Act 1988 s 78(3)(a) (repealed: see note 2).

8 See the Criminal Justice Act 1988 s 78(3)(b) (repealed: see note 2).

9 See the Criminal Justice Act 1988 s 78(3)(c) (repealed: see note 2).

10 See the Criminal Justice Act 1988 s 78(3)(d) (repealed: see note 2).

11 See the Criminal Justice Act 1988 s 78(7) (substituted by the Proceeds of Crime Act 1995 s 8(5); repealed (see note 2)). An application for the discharge or variation of a charging order may be made by any person affected by it: see the Criminal Justice Act 1988 s 78(8) (repealed).

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471. Realisation of property.

Where a confiscation order is made¹ in proceedings instituted for a pre-24 March 2003² offence³ or such an order is made or varied on an application for the reconsideration of the defendant's⁴ case⁵, the proceedings in question have not, or the application in question has not, been concluded, and the order or variation is not subject to appeal, the High Court⁶ may, on an application by the prosecutor⁷:

- 1553 (1) appoint a receiver⁸ in respect of realisable property⁹;
- 1554 (2) empower a receiver so appointed, in connection with a restraint order¹⁰ or in pursuance of a charging order¹¹ (a) to enforce any charge imposed under a charging order on realisable property¹² or on interest or dividends payable in respect of such property; and (b), in relation to any realisable property other than property for the time being subject to a charge under a charging order, to take possession of the property subject to such conditions or exceptions as may be specified by the court¹³;
- 1555 (3) order any person having possession of realisable property to give possession of it to any such receiver¹⁴;
- 1556 (4) empower any such receiver to realise any realisable property in such manner as the court may direct¹⁵;
- 1557 (5) to order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift¹⁶ as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property¹⁷.

The court may not in respect of any property exercise the powers under head (2) (a), (4) or (5) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court¹⁸.

1 As to the making of a confiscation order see PARA 460.

2 The Criminal Justice Act 1988 Pt VI was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

3 As to the offences to which the Criminal Justice Act 1988 applies see PARA 460.

4 As to the 'defendant' see PARA 460 note 4.

5 Ie an application under the Criminal Justice Act 1988 s 74A (review of cases where proceeds of crime not assessed: see PARA 464), s 74B (revision of assessment of proceeds of crime: see PARA 465) or s 74C (revision of assessment of amount to be recovered: see PARA 466).

6 Provision is made for the exercise of the powers of the High Court under the Criminal Justice Act 1988 ss 77-81: see s 82 (repealed: see note 2).

7 See the Criminal Justice Act 1988 s 80(1) (amended by the Proceeds of Crime Act 1995 s 8(6); repealed (see note 2)).

8 Provision is made for the exercise of the powers of a receiver under the Criminal Justice Act 1988 ss 77-81 (see ss 82, 88 (repealed: see note 2)) and for the order of priority in which sums in the hands of a receiver are to be applied pursuant to the satisfaction of a confiscation order (see s 81 (amended by the Justices of the Peace Act 1997 Sch 5 para 23; the Access to Justice Act 1999 Sch 13 paras 136, 139, Sch 15 Pt V; SI 1992/709; repealed (see note 2))).

9 See the Criminal Justice Act 1988 s 80(2) (repealed: see note 2).

10 Ie under the Criminal Justice Act 1988 s 77: see PARA 469.

11 Ie under the Criminal Justice Act 1988 s 78: see PARA 470.

12 As to property see PARA 460 note 7.

13 See the Criminal Justice Act 1988 s 80(3) (repealed: see note 2).

14 See the Criminal Justice Act 1988 s 80(4) (repealed: see note 2). The provisions of s 80(4)-(6) do not apply to property for the time being subject to a charge under s 78: see s 80(7) (repealed).

15 See the Criminal Justice Act 1988 s 80(5) (repealed: see note 2). See note 14.

16 Ie a gift caught by the Criminal Justice Act 1988 Pt VI. As to the gifts so caught see PARA 460 note 7.

17 See the Criminal Justice Act 1988 s 80(6) (repealed: see note 2). See note 14.

18 See the Criminal Justice Act 1988 s 80(7) (repealed: see note 2).

UPDATE

471 Realisation of property

TEXT AND NOTES--A dispute with a third party as to the beneficial ownership of property alleged to be 'realisable property' is to be resolved in accordance with ordinary principles of property law, save to the extent that the Criminal Justice Act 1988 provides: *Revenue and Customs Prosecution Office v May* [2010] EWCA Civ 521, [2010] All ER (D) 86 (May).

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472. Compensation.

If proceedings are instituted against a person for a pre-24 March 2003¹ offence² and either the proceedings do not result in his conviction for any such offence or, where he is convicted of one or more such offences, the conviction or convictions concerned are quashed or he is pardoned by Her Majesty in respect of the conviction or convictions concerned, the High Court may, on an application by any person who held property³ which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, the court considers it appropriate to make such an order⁴. The High Court may not order compensation to be paid in any case, however, unless the court is satisfied that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned and that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of a confiscation order⁵. Nor may the court order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred⁶. The amount of compensation so to be paid is such as the High Court thinks just in all the circumstances of the case⁷.

1 The Criminal Justice Act 1988 Pt VI was repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(a): see PARA 459.

2 As to the offences to which the Criminal Justice Act 1988 applies see PARA 460.

3 As to property see PARA 460 note 7.

4 See the Criminal Justice Act 1988 s 89(1) (repealed: see note 1).

5 See the Criminal Justice Act 1988 s 89(2), (5) (repealed: see note 1).

6 See the Criminal Justice Act 1988 s 89(3) (repealed: see note 1).

7 See the Criminal Justice Act 1988 s 89(4) (repealed: see note 1).

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473. Laundering, concealment, tipping-off etc.

A person is guilty of an offence if, in relation to the proceeds of criminal conduct¹ pre-dating 24 March 2003²:

- 1558 (1) he enters into or is otherwise concerned in an arrangement³ whereby the retention or control by or on behalf of another of a person's proceeds of criminal conduct is facilitated or those proceeds are used to secure that funds are placed at the person's disposal or are used for his benefit to acquire property⁴ by way of investment⁵;
- 1559 (2) knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it⁶;
- 1560 (3) he conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct or converts or transfers that property or removes it from the jurisdiction, for the purpose of avoiding prosecution or the making or enforcement in his case of a confiscation order⁷;
- 1561 (4) knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he conceals or disguises that property or converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution or the making or enforcement in his case of a confiscation order⁸;
- 1562 (5) he knows or suspects that a constable is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering⁹ and he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation¹⁰; or
- 1563 (6) he knows or suspects that a disclosure has been made in relation to the investigation of an offence under head (1) or head (2) above and he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure¹¹.

These offences are punishable by imprisonment or a fine, or both¹², and proceedings for these offences are instituted by the Commissioners for Her Majesty's Revenue and Customs¹³. The scope of these offences may by regulations be extended to include persons in the public service of the Crown, although no such extension has been made¹⁴. Provision is also made for ordering the production of material and the disclosure of information for the purposes of an investigation into one of these offences and for the securing of search warrants¹⁵.

¹ As to criminal conduct, benefit etc see PARA 460 note 7.

² The Criminal Justice Act 1988 Pt VI was repealed as from 24 March 2003 (or 24 February 2003 in the case of ss 93A-93J (see the text and notes 3-15)) by the Proceeds of Crime Act 2002 Sch 11 paras 1, 17, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Criminal Justice Act 1988 Pt VI continues to apply by virtue of the Proceeds of Crime Act 2002

(Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, arts 5, 6, 10(1)(a): see PARA 459.

3 le knowing or suspecting that the person in question is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct: Criminal Justice Act 1988 s 93A(1) (ss 93A-93G added by the Criminal Justice Act 1993 ss 29-35, Sch 4 paras 1, 3; repealed (see note 2)).

4 As to property see PARA 460 note 7.

5 See the Criminal Justice Act 1988 s 93A(1) (as added and repealed: see notes 2, 3). Provision is made as to the property within the scope of this offence, the disclosure of information relating to this offence, and defences: see s 93A(2)-(5) (as so added and repealed).

6 See the Criminal Justice Act 1988 s 93B(1) (as added and repealed: see notes 2, 3). Provision is made as to the property and the use of property within the scope of this offence, the disclosure of information relating to this offence, and defences: see s 93B(2)-(8), (10) (as so added and repealed).

7 See the Criminal Justice Act 1988 s 93C(1) (as added and repealed: see notes 2, 3). As to the making of a confiscation order see PARA 460. References in s 93C to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it: s 93C(3) (as so added and repealed).

8 See the Criminal Justice Act 1988 s 93C(2) (as added and repealed: see notes 2, 3).

9 For this purpose 'money laundering' means doing any act which constitutes an offence under the Criminal Justice Act 1988 s 93A, s 93B or s 93C (see the text and notes 1-8) or, in the case of an act done otherwise than in England and Wales, would constitute such an offence if done in England and Wales (s 93D(7) (as added and repealed: see notes 2, 3)): for this purpose having possession of any property is taken to be doing an act in relation to it (s 93D(8) (as so added and repealed)).

10 See the Criminal Justice Act 1988 s 93D(1) (as added and repealed: see notes 2, 3). Provision is made for the protection of legal advisors acting in a professional capacity, and for other defences: see s 93D(4)-(6), (10) (as so added and repealed).

11 See the Criminal Justice Act 1988 s 93D(2), (3) (as added and repealed: see notes 2, 3).

12 See the Criminal Justice Act 1988 ss 93A(6), 93B(9), 93C(4), 93D(9) (as added and repealed: see notes 2, 3). These offences are punishable on summary conviction by imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both, or on conviction on indictment to imprisonment for a term not exceeding 14 years (five years in the case of an offence under s 93D) or a fine or to both: see ss 93A(6), 93B(9), 93C(4), 93D(9) (as so added and repealed). As to the statutory maximum see PARA 140.

13 See the Criminal Justice Act 1988 s 93F (as added and repealed: see notes 2, 3); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900.

14 See the Criminal Justice Act 1988 s 93G (as added and repealed: see notes 2, 3).

15 See the Criminal Justice Act 1988 ss 93H-93J (added by the Proceeds of Crime Act 1995 ss 11-13; repealed (see note 2)).

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C. CONFISCATION UNDER THE DRUG TRAFFICKING ACT 1994

474. Power to make confiscation orders.

The Drug Trafficking Act 1994¹ made provision for a court sentencing a person for a drug trafficking offence² committed before 24 March 2003³ to order the person to pay any such amount as the court has determined to be the benefits of drug trafficking accrued by the defendant⁴. Orders so made are enforced as if they were fines⁵. Confiscation orders may be made in respect of defendants previously sentenced by the court where there is evidence to justify the reconsideration or re-assessment of their cases⁶ and in respect of defendants who have absconded or died⁷. Restraint orders and charging orders may also be made in respect of ongoing proceedings⁸ and powers are conferred on the court to enforce the realisation of property which is the subject of a confiscation order⁹: provision for the enforcement of confiscation orders made abroad is also made¹⁰.

1 le the Drug Trafficking Act 1994 Pt 1 (ss 1-41). Those provisions were repealed as from 24 March 2003 by the Proceeds of Crime Act 2002 Sch 11 paras 1, 25, Sch 12, and replaced by Pt 2 (see PARA 390 et seq) other than in relation to offences committed before that date, in relation to which the Drug Trafficking Act 1994 Pt 1 continues to apply by virtue of the Proceeds of Crime Act 2002 (Commencement No 5, Transitional Provisions, Savings and Amendment) Order 2003, SI 2003/333, art 10(1)(e): see PARAS 309, 459.

2 le as defined by the Drug Trafficking Act 1994 s 1 (repealed: see note 1), and provided the offence in question was committed before 24 March 2003 (see note 1).

3 See note 1.

4 See the Drug Trafficking Act 1994 ss 2, 3 (repealed: see note 1). Provision for determining the amount payable, including assessing the proceeds of drug trafficking (and, where applicable, paying compensation), is made by ss 4-8, 16-18 (repealed). Provision in connection with the giving of statements and the provision of information to the court is made by ss 11, 12 (repealed).

5 See the Drug Trafficking Act 1994 ss 9, 10 (repealed: see note 1).

6 See the Drug Trafficking Act 1994 ss 13-15 (repealed: see note 1).

7 See the Drug Trafficking Act 1994 ss 19-24 (repealed: see note 1).

8 See the Drug Trafficking Act 1994 ss 25-28 (repealed: see note 1).

9 See the Drug Trafficking Act 1994 ss 29-31, 36 (repealed: see note 1). Provision in connection with the realisation of property in the hands of bankrupts or insolvent companies is made by ss 32, 34, 35 (repealed).

10 See the Drug Trafficking Act 1994 ss 37-40 (repealed: see note 1).

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(iii) Financial Reporting Orders

475. Making of financial reporting orders.

A court sentencing or otherwise dealing with a person convicted of a specified offence¹ may also make a financial reporting order in respect of him². However, it may do so only if it is satisfied that the risk of the person's committing another specified offence is sufficiently high to justify the making of a financial reporting order³.

A financial reporting order:

- 1564 (1) comes into force when it is made⁴; and
- 1565 (2) has effect for the period specified in the order, beginning with the date on which it is made⁵.

If the order is made by a magistrates' court, the period referred to in head (2) above must not exceed five years⁶. Otherwise, that period must not exceed:

- 1566 (a) if the person is sentenced to imprisonment for life, 20 years⁷; or
- 1567 (b) otherwise, 15 years⁸.

Since a financial reporting order can be made only on conviction it is a 'sentence of the court' for the purposes of an appeal⁹; however it is not a 'penalty' for the purposes of the prohibition¹⁰ against retrospective laws¹¹.

1 As to the offences in relation to which financial reporting orders may be made see PARA 388.

2 Serious Organised Crime and Police Act 2005 s 76(1). As to the effect of financial reporting orders see PARA 477. A financial reporting order is a preventative measure and not a penalty for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 7 (prohibition of retrospective laws: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 148): see *R v Adams* [2008] EWCA Crim 914, [2008] 4 All ER 574, [2009] 1 WLR 310, obiter per Latham LJ; *R v Wright* [2008] EWCA Crim 3207, [2009] 2 Cr App Rep (S) 313, [2009] Crim LR 373.

3 Serious Organised Crime and Police Act 2005 s 76(2). In connection with the assessment of this risk see *R v Wright* [2008] EWCA Crim 3207, [2009] 2 Cr App Rep (S) 313, [2009] Crim LR 373.

4 Serious Organised Crime and Police Act 2005 s 76(5)(a).

5 Serious Organised Crime and Police Act 2005 s 76(5)(b).

6 Serious Organised Crime and Police Act 2005 s 76(6).

7 Serious Organised Crime and Police Act 2005 s 76(7)(a).

8 Serious Organised Crime and Police Act 2005 s 76(7)(b).

9 Ie for the purposes of the right of appeal under the Criminal Appeal Act 1968; as to appeals against sentence see PARA 44 et seq.

10 le under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), art 7(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 148).

11 See *R v Adams* [2008] EWCA Crim 914, [2008] 4 All ER 574.

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476. Offences in relation to which financial reporting orders may be made.

The offences in relation to which financial reporting orders¹ may be made are:

- 1568 (1) fraud²;
- 1569 (2) obtaining services dishonestly³;
- 1570 (3) a common law offence of conspiracy to defraud⁴;
- 1571 (4) false accounting⁵;
- 1572 (5) 'lifestyle offences' under proceeds of crime legislation⁶;
- 1573 (6) a common law offence of bribery⁷;
- 1574 (7) corruption in office⁸;
- 1575 (8) bribery involving agents⁹;
- 1576 (9) assisting another to retain the benefit of criminal conduct¹⁰;
- 1577 (10) acquisition, possession or use of proceeds of criminal conduct¹¹;
- 1578 (11) concealing or transferring proceeds of criminal conduct¹²;
- 1579 (12) concealing or transferring proceeds of drug trafficking¹³;
- 1580 (13) assisting another person to retain the benefit of drug trafficking¹⁴;
- 1581 (14) acquisition, possession or use of proceeds of drug trafficking¹⁵;
- 1582 (15) fund-raising for purposes of terrorism¹⁶;
- 1583 (16) use and possession of money etc for purposes of terrorism¹⁷;
- 1584 (17) funding arrangements for purposes of terrorism¹⁸;
- 1585 (18) money laundering in connection with terrorism¹⁹;
- 1586 (19) acquisition, use and possession of criminal property²⁰;
- 1587 (20) a common law offence of cheating in relation to the public revenue²¹;
- 1588 (21) fraudulent evasion of duty²²;
- 1589 (22) offences relating to value added tax²³;
- 1590 (23) fraudulent evasion of income tax²⁴;
- 1591 (24) tax credit fraud²⁵;
- 1592 (25) attempting, conspiring in or inciting, or aiding, abetting, counselling or procuring, the commission of an offence mentioned in heads (1), (4) or (6) to (25)²⁶.

¹ See PARA 475.

² Serious Organised Crime and Police Act 2005 s 76(3)(aa)(i) (s 76(3)(aa) added by the Fraud Act 2006 Sch 1 para 36). As to this offence see the Fraud Act 2006 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

³ Serious Organised Crime and Police Act 2005 s 76(3)(aa)(ii) (as added: see note 2). As to this offence see the Fraud Act 2006 s 11; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

⁴ Serious Organised Crime and Police Act 2005 s 76(3)(ab) (s 76(3)(ab), (ac), (d)-(q) added by SI 2007/1392). As to this offence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 73.

The Serious Organised Crime and Police Act 2005 (Amendment of Section 76(3)) Order 2007, SI 2007/1392, is made under the Serious Organised Crime and Police Act 2005 s 76(4), which provides that the Secretary of State may by order amend s 76(3) so as to remove an offence from it or add an offence to it.

⁵ Serious Organised Crime and Police Act 2005 s 76(3)(ac) (as added: see note 4). As to this offence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 316.

⁶ Serious Organised Crime and Police Act 2005 s 76(3)(c). As to these offences see the Proceeds of Crime Act 2002 Sch 2; and PARA 393.

- 7 Serious Organised Crime and Police Act 2005 s 76(3)(d) (as added: see note 4). As to this offence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 527 et seq.
- 8 Serious Organised Crime and Police Act 2005 s 76(3)(e) (as added: see note 4). As to this offence see the Public Bodies Corrupt Practices Act 1889 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 529.
- 9 Serious Organised Crime and Police Act 2005 s 76(3)(f) (as added: see note 4). As to this offence see the Prevention of Corruption Act 1906 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 321.
- 10 Serious Organised Crime and Police Act 2005 s 76(3)(g) (as added: see note 4). As to this offence see the Criminal Justice Act 1988 s 93A (repealed); and PARA 473.
- 11 Serious Organised Crime and Police Act 2005 s 76(3)(g) (as added: see note 4). As to this offence see the Criminal Justice Act 1988 s 93B (repealed); and PARA 473.
- 12 Serious Organised Crime and Police Act 2005 s 76(3)(g) (as added: see note 4). As to this offence see the Criminal Justice Act 1988 s 93C (repealed); and PARA 473.
- 13 Serious Organised Crime and Police Act 2005 s 76(3)(h) (as added: see note 4). As to this offence see the Drug Trafficking Act 1994 s 49 (repealed).
- 14 Serious Organised Crime and Police Act 2005 s 76(3)(h) (as added: see note 4). As to this offence see the Drug Trafficking Act 1994 s 50 (repealed).
- 15 Serious Organised Crime and Police Act 2005 s 76(3)(h) (as added: see note 4). As to this offence see the Drug Trafficking Act 1994 s 51 (repealed).
- 16 Serious Organised Crime and Police Act 2005 s 76(3)(i) (as added: see note 4). As to this offence see the Terrorism Act 2000 s 15; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 390.
- 17 Serious Organised Crime and Police Act 2005 s 76(3)(i) (as added: see note 4). As to this offence see the Terrorism Act 2000 s 16; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 391.
- 18 Serious Organised Crime and Police Act 2005 s 76(3)(i) (as added: see note 4). As to this offence see the Terrorism Act 2000 s 17; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 392.
- 19 Serious Organised Crime and Police Act 2005 s 76(3)(i) (as added: see note 4). As to this offence see the Terrorism Act 2000 s 18; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 393.
- 20 Serious Organised Crime and Police Act 2005 s 76(3)(j) (as added: see note 4). As to these offences see the Proceeds of Crime Act 2002 s 329; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 793.
- 21 Serious Organised Crime and Police Act 2005 s 76(3)(k) (as added: see note 4).
- 22 Serious Organised Crime and Police Act 2005 s 76(3)(l) (as added: see note 4). As to these offences see the Customs and Excise Management Act 1979 s 170; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178.
- 23 Serious Organised Crime and Police Act 2005 s 76(3)(m) (as added: see note 4). As to these offences see the Value Added Tax Act 1994 s 72; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 317.
- 24 Serious Organised Crime and Police Act 2005 s 76(3)(n) (as added: see note 4). As to these offences see the Finance Act 2000 s 144; and **INCOME TAXATION** vol 23(2) (Reissue) PARA 1824.
- 25 Serious Organised Crime and Police Act 2005 s 76(3)(o) (as added: see note 4). As to these offences see the Tax Credits Act 2002 s 35; and **SOCIAL SECURITY AND PENSIONS**.
- 26 Serious Organised Crime and Police Act 2005 s 76(3)(p), (q) (as added: see note 4).

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477. Effect of financial reporting orders.

A person in relation to whom a financial reporting order¹ has effect must:

- 1593 (1) make a report in respect of:
- .20 27. (a) the period of a length specified² in the order beginning with the date on which the order comes into force³; and
- 28. (b) subsequent periods of specified lengths, each period beginning immediately after the end of the previous one⁴;
- .21 1594 (2) set out in each report, in the specified manner, such particulars of his financial affairs relating to the period in question as may be specified⁵;
- 1595 (3) include any specified documents with each report⁶;
- 1596 (4) make each report within the specified number of days after the end of the period in question⁷; and
- 1597 (5) make each report to the specified person⁸.

A person who without reasonable excuse includes false or misleading information in a report, or otherwise fails to comply with any of these requirements, is guilty of an offence⁹.

1 See PARA 475; and as to the offences in relation to which a financial reporting order may be made see PARA 476.

2 In the Serious Organised Crime and Police Act 2005 s 79, 'specified' means specified by the court in the order: s 79(8).

3 Serious Organised Crime and Police Act 2005 s 79(1), (2)(a). Rules of court may provide for the maximum length of the periods which may be specified under s 79(2): s 79(7).

4 Serious Organised Crime and Police Act 2005 s 79(2)(b). See note 3.

5 Serious Organised Crime and Police Act 2005 s 79(3).

6 Serious Organised Crime and Police Act 2005 s 79(4).

7 Serious Organised Crime and Police Act 2005 s 79(5).

8 Serious Organised Crime and Police Act 2005 s 79(6).

9 Serious Organised Crime and Police Act 2005 s 79(10)(a)(i), (b). A person who commits this offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: ss 79(10), 175(1), (3). In relation to such an offence committed after the date on which the Criminal Justice Act 2003 s 281(5) (alteration of penalties for summary offences: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121) comes into force, the reference to a maximum term of imprisonment of six months is to be read as a reference to a maximum of 51 weeks: see the Serious Organised Crime and Police Act 2005 ss 79(10)(a)(i), 175(1), (3). At the date at which this volume states the law no day had been appointed for the commencement of the Criminal Justice Act 2003 s 281(5). As to the standard scale see PARA 142.

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478. Variation and revocation of financial reporting orders.

An application for the variation or revocation of a financial reporting order¹ may be made by:

- 1598 (1) the person in respect of whom it has been made²; and
- 1599 (2) the person³ to whom reports are to be made under it⁴.

The application must be made to the court which made the order⁵. However, if the order was made on appeal, the application must be made to the court which originally sentenced the person in respect of whom the order was made⁶. If (in either case) that court was a magistrates' court, the application may be made to any magistrates' court acting in the same local justice area as that court⁷.

1 See PARA 475; and as to the offences in relation to which a financial reporting order may be made see PARA 476. As to the effect of financial reporting orders see PARA 477.

2 Serious Organised Crime and Police Act 2005 s 80(1)(a).

3 Ie the person to whom reports are to be made under the Serious Organised Crime and Police Act 2005 s 79(6) (see PARA 477).

4 Serious Organised Crime and Police Act 2005 s 80(1)(b).

5 Serious Organised Crime and Police Act 2005 s 80(2).

6 Serious Organised Crime and Police Act 2005 s 80(3).

7 Serious Organised Crime and Police Act 2005 s 80(4).

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479. Verification and disclosure.

The specified person¹ may, for the purpose of:

- 1600 (1) checking the accuracy of a report² or of any other report made pursuant to the same financial reporting order³; or
- 1601 (2) discovering the true position⁴,

disclose a report to any person who he reasonably believes may be able to contribute to doing either of those things⁵.

Any other person may disclose information to:

- 1602 (a) the specified person⁶; or
- 1603 (b) a person to whom the specified person has disclosed a report⁷,

for the purpose of contributing to doing either of the things mentioned in head (1) or head (2) above⁸.

The specified person may also disclose a report for the purposes of:

- 1604 (i) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom⁹ or elsewhere¹⁰;
- 1605 (ii) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom¹¹.

1 In the Serious Organised Crime and Police Act 2005 s 81, 'specified person' means the person to whom reports under a financial reporting order (see PARA 475) are to be made: s 81(1).

2 In the Serious Organised Crime and Police Act 2005 s 81, references to a report include any of its contents, any document included with the report, or any of the contents of such a document: s 81(8).

3 Serious Organised Crime and Police Act 2005 s 81(4)(a).

4 Serious Organised Crime and Police Act 2005 s 81(4)(b).

5 Serious Organised Crime and Police Act 2005 s 81(2). A disclosure under s 81 does not breach any obligation of confidence owed by the person making the disclosure (s 81(6)(a)) or any other restriction on the disclosure of information (however imposed) (s 81(6)(b)). However, nothing in s 81 authorises a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions: Serious Organised Crime and Police Act 2005 s 81(7). As to the Data Protection Act 1998 see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 503 et seq.

6 Serious Organised Crime and Police Act 2005 s 81(3)(a).

7 Serious Organised Crime and Police Act 2005 s 81(3)(b).

8 Serious Organised Crime and Police Act 2005 s 81(3).

9 As to the meaning of 'United Kingdom' see PARA 9 note 2.

- 10 Serious Organised Crime and Police Act 2005 s 81(5)(a).
- 11 Serious Organised Crime and Police Act 2005 s 81(5)(b).

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(iv) Orders for Forfeiture and Disposal

A. FORFEITURE AND DEPRIVATION ORDERS GENERALLY

480. Forfeiture orders generally.

The court:

- 1606 (1) may, on a conviction for seditious or blasphemous libel, make an order for the disposal of all copies of the libel seized¹;
- 1607 (2) may, where any person is convicted of an offence under the Incitement to Disaffection Act 1934, and subject to certain conditions, order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order²;
- 1608 (3) may, where any person is convicted of an offence under the Prevention of Crime Act 1953, make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed³;
- 1609 (4) may, where articles are seized under the Obscene Publications Act 1959 and a person is convicted of having them for publication for gain, and subject to certain conditions, order the forfeiture of those articles⁴;
- 1610 (5) may, where a person has been found guilty of specified offences involving firearms⁵, make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm or shot gun certificate held by him⁶;
- 1611 (6) may, where a shipping or other transport operator⁷ convicted on indictment of assisting unlawful immigration to a member state of the European Union, of helping an asylum-seeker to enter the United Kingdom or of assisting entry to the United Kingdom in breach of a deportation or exclusion order, order the forfeiture of the ship, aircraft or vehicle⁸;
- 1612 (7) must, where indecent photographs or pseudo-photographs of children are seized, and a person is convicted of an offence⁹ in respect of those photographs or pseudo-photographs, and subject to certain conditions, order them to be forfeited¹⁰;
- 1613 (8) may, in the case of specified customs offences, order forfeiture of goods, ships and aircraft¹¹;
- 1614 (9) may, where a person is convicted of specified forgery offences, and subject to certain conditions, order any thing shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order¹²;
- 1615 (10) must, where a person is convicted of specified offences relating to racial hatred or to religious hatred or hatred on the grounds of sexual orientation, and subject to certain conditions, order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates¹³;
- 1616 (11) may, where a person is convicted of an offence under the Crossbows Act 1987, make such order as it thinks fit as to the forfeiture or disposal of any crossbow or part of a crossbow in respect of which the offence was committed¹⁴;

- 1617 (12) may order the forfeiture and destruction of items relating to specified drug trafficking offences¹⁵; and
- 1618 (13) may make various orders for forfeiture in connection with the funding or organisation of terrorism¹⁶.

1 See the Criminal Libel Act 1819 s 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 370.

2 See the Incitement to Disaffection Act 1934 s 3(4); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 373.

3 See the Prevention of Crime Act 1953 s 1(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 699.

4 See the Obscene Publications Act 1964 s 1(4); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 747.

5 Ie (by virtue of the Firearms Act 1968 s 52(1)(a)-(c) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 697)), where a person:

713 (1) is convicted of specified offences under the Firearms Act 1968 or the Firearms (Amendment) Act 1988 or is convicted of a crime for which he is sentenced to imprisonment or detention in a young offender institution or is subject to a detention and training order;

714 (2) has been ordered to enter into a recognisance to keep the peace or to be of good behaviour, a condition of which is that he neither uses nor carries a firearm; or

715 (3) is subject to a community order containing a requirement that he must not possess, use or carry a firearm.

6 See the Firearms Act 1968 s 52(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 697.

7 Ie (by virtue of the Immigration Act 1971 s 25C (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**)) a person who was at the time of the offence:

716 (1) the owner or one of the owners of a ship, aircraft or vehicle used or intended to be used in connection with the offence;

717 (2) a director, secretary or manager of a company which owned any such ship, aircraft or vehicle;

718 (3) in possession of such ship, aircraft or vehicle under a hire-purchase agreement;

719 (4) a director, secretary or manager of a company in such possession of such a ship, aircraft or vehicle;

720 (5) in the case of such a vehicle, driving it, or, in the case of such a ship or aircraft, its charterer; or

721 (6) in the case of any such ship or aircraft, its captain.

8 See the Immigration Act 1971 s 25C; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

9 Ie under the Protection of Children Act 1978 or the Criminal Justice Act 1988: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 760.

10 See the Protection of Children Act 1978 s 5(6); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 760.

11 See the Customs and Excise Management Act 1979 ss 49, 88-90, 139-144 (see **CUSTOMS AND EXCISE**).

12 See the Forgery and Counterfeiting Act 1981 ss 7(3), (4), 24(3)-(5); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 352, 550.

13 See the Public Order Act 1986 ss 25, 29I; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 568, 575.

14 See the Crossbows Act 1987 s 6(3); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 708.

15 See the Misuse of Drugs Act 1971 s 27; and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283.

16 See the Terrorism Act 2000 ss 23, 23A, 23B, Sch 4; the Terrorism Act 2006 s 7; and PARAS 482-491.

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481. Deprivation orders in respect of property used, or intended for use, for purposes of crime.

Where a person is convicted of an offence and:

- 1619 (1) the court by or before which he is convicted is satisfied that any property which has been lawfully seized¹ from him, or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued, has been used for the purpose of committing², or facilitating the commission³ of, any offence⁴, or was intended by him to be used for that purpose⁵; or
- 1620 (2) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which has been lawfully seized from him⁶, or was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued⁷,

the court may make a deprivation order in respect of that property⁸. It may do so whether or not it also deals with the offender in any other way in respect of the offence of which he has been convicted⁹ and without regard to any restrictions on forfeiture in an enactment passed before 29 July 1988¹⁰.

In considering whether to make a deprivation order, the court must have regard to the value of the property¹¹ and to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making)¹².

An order so made operates to deprive the offender of his rights, if any, in the property to which it relates, and the property must (if not already in their possession) be taken into the possession of the police¹³.

Where a court makes a deprivation order in a case where:

- 1621 (a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage¹⁴; or
- 1622 (b) any such offence is taken into consideration by the court in determining sentence¹⁵,

the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court must be paid to that person¹⁶. However, the court may so make an order only if it is satisfied that, but for the inadequacy of the means of the offender, it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount¹⁷.

1 The power of deprivation in the Powers of Criminal Courts (Sentencing) Act 2000 s 143 does not provide a power of seizure: *Malone v Metropolitan Police Comr* [1980] QB 49, 69 Cr App Rep 4, CA. As to the seizure of property see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 886 et seq.

2 Where a person commits an offence to which the Powers of Criminal Courts (Sentencing) Act 2000 s 143(6) applies:

- 722 (1) by driving, attempting to drive, or being in charge of a vehicle (s 143(6)(a));
- 723 (2) by failing to comply with a requirement made under the Road Traffic Act 1988 s 7 (provisions of specimens for analysis: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 986) or s 7A (specimens of blood taken from persons incapable of consenting: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 987) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle (Powers of Criminal Courts (Sentencing) Act 2000 s 143(6)(b) (amended by the Police Reform Act 2002 s 56(6))); or
- 724 (3) by failing, as the driver of a vehicle, to comply with the Road Traffic Act 1988 s 170(2) or (3) (duty to stop and give information or report accident: see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 645) (Powers of Criminal Courts (Sentencing) Act 2000 s 143(6)(c)),

the vehicle is to be regarded for the purposes of s 143(1) and s 144(1)(b) (see note 13) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence): s 143(6) (as so amended).

The Powers of Criminal Courts (Sentencing) Act 2000 s 143(6) applies to:

- 725 (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment (Powers of Criminal Courts (Sentencing) Act 2000 s 143(7)(a));
- 726 (b) an offence of manslaughter (s 143(7)(b)); and
- 727 (c) an offence under the Offences against the Person Act 1861 s 35 (wanton and furious driving: see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1018) (Powers of Criminal Courts (Sentencing) Act 2000 s 143(7)(c)).

3 For these purposes, facilitating the commission of an offence is to be taken to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection: Powers of Criminal Courts (Sentencing) Act 2000 s 143(8). The property must be used for the purpose of committing or facilitating the commission of an offence: *R v Lucas* [1976] RTR 235, CA; and see the cases cited in note 8.

4 Powers of Criminal Courts (Sentencing) Act 2000 s 143(1)(a).

5 Powers of Criminal Courts (Sentencing) Act 2000 s 143(1)(b). Lack of such intention or purpose prevents the making of such an order: *R v Ribeyre* (1982) 4 Cr App Rep (S) 165, [1982] Crim LR 538, CA (decided under the Misuse of Drugs Act 1971 s 27 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283)).

6 Powers of Criminal Courts (Sentencing) Act 2000 s 143(2)(a).

7 Powers of Criminal Courts (Sentencing) Act 2000 s 143(2)(b).

8 Powers of Criminal Courts (Sentencing) Act 2000 s 143(1), (2). This power does not apply to real property, the power being necessarily confined to personal property: *R v Khan* [1982] 3 All ER 969, 76 Cr App Rep 29, [1980] Crim LR 249, CA (deprivation order with regard to a house quashed).

Deprivation orders ought not to be made except in simple, uncomplicated cases. If a person has an interest in an object which is not free from incumbrances, difficulties are likely to arise: *R v Troth* (1979) 71 Cr App Rep 1, CA (deprivation order with regard to appellant's rights in lorry quashed; lorry co-owned by himself and his partner; lorry used in their business). It is incumbent upon the prosecution to justify the application for a deprivation order and upon the trial judge to put the prosecution to proof if the prosecution simply states baldly, without any supporting evidence, that it seeks a deprivation order: *R v Pemberton* (1982) 4 Cr App Rep (S) 328, [1983] Crim LR 121, CA. The money or other matter to be forfeited must relate to the offence of which the accused was convicted: *R v Cox (Stephen)* (1986) 8 Cr App Rep (S) 384, CA. In the case of a crime committed on the spur of the moment, it has been held not appropriate to order deprivation of a car of considerable value: *R v Miele* [1976] RTR 238, CA. Where a car was an integral part of the commission of the offence of handling stolen goods, it has been held appropriate for a deprivation order to be made: *R v Lidster* [1976] RTR 240, [1976] Crim LR 80, CA; and see *R v Boothe* (1987) 9 Cr App Rep (S) 8, [1987] Crim LR 347, CA. When a car is used for the appropriate purposes within the Powers of Criminal Courts (Sentencing) Act 2000 s

143(1), it is appropriate to make a deprivation order, which perhaps should be considered more frequently: *R v Stratton* (1988) Times, 15 January, CA. No deprivation order may be made when the property has been used by persons other than the offender to commit an offence: *R v Slater* [1986] 3 All ER 786, 8 Cr App Rep (S) 217, CA; *R v Neville* (1987) 9 Cr App Rep (S) 222, [1987] Crim LR 585, CA. However, property can be the subject of a deprivation order where it was used by another to facilitate the commission of an offence by the offender: *R v Colville-Scott* [1990] 1 WLR 958, 12 Cr App Rep (S) 238, CA. There may be exceptional circumstances suggesting that such an order should not be made because it would have a disproportionately severe impact, such as where the property is a vehicle and the offender is physically disabled: *R v Tavernor* [1976] RTR 242, CA. A deprivation order may not be made in respect of property which appears to be the proceeds of earlier offences (*R v Neville*), but a deprivation order made in relation to money which is the offender's working capital for future dealings has been held to be properly made (*R v O'Farrell* (1988) 10 Cr App Rep (S) 74, CA). A deprivation order cannot be made where the use of a motor vehicle was merely incidental to the commission of an offence (*R v Wilmott* (1985) 149 JP 428, CA), but it may be made in respect of an offender convicted of driving while disqualified (*R v Highbury Corner Stipendiary Magistrates' Court, ex p Di Matteo* [1992] 1 All ER 102, 92 Cr App Rep 263, DC). A deprivation order cannot be used as security for a fine; it is to be provided as an additional penalty: *R v Kingston-upon-Hull Stipendiary Magistrate, ex p Hartung* [1981] RTR 262, (1980) 72 Cr App Rep 26, DC. Where the applicant disputed ownership of a car in connection with which a deprivation order had been made on the conviction of her husband, since ownership could not be determined by the Crown Court under the Courts Act 1971 s 11 (repealed), the order was quashed and the case remitted to the justices with a direction to hear and determine the matter under the Police (Property) Act 1897: *R v Chester Justices, ex p Smith* [1978] RTR 373, (1978) 67 Cr App Rep 133, DC; and see also *R v Menocal* [1980] AC 598, sub nom *Customs and Excise Comrs v Menocal* (1979) 69 Cr App Rep 148 at 157, HL.

An order should not be made unless the court has information as to the value of the property involved and the effect on the offender of making the order: *R v Ball* [2002] EWCA Crim 2777, [2003] 2 Cr App Rep (S) 92, [2003] Crim LR 122. Where several offenders are equally culpable for an offence and receive comparable sentences, a deprivation order against one of them may give rise to an objectionable disparity: *R v Ottey* (1984) 6 Cr App Rep (S) 163, [1984] Crim LR 506, CA; and see also *R v Burgess* [2001] 2 Cr App Rep (S) 5, CA.

When fixing the totality of a sentence, the court must reflect and take account of the financial penalties imposed by any deprivation orders made under the Powers of Criminal Courts (Sentencing) Act 2000 s 143: *R v Joyce* (1989) 11 Cr App Rep (S) 253, CA; *R v Priestly* [1996] 2 Cr App Rep (S) 144, CA. In addition to the totality of the sentence, the court should have regard to the two matters set out in the Powers of Criminal Courts (Sentencing) Act 2000 s 143(5) (see the text and notes 11-12): see *R v Highbury Corner Stipendiary Magistrates' Court, ex p Di Matteo*.

As to confiscation orders under the Proceeds of Crime Act 2002 see PARA 391 et seq; as to confiscation orders under the Drug Trafficking Offences Act 1986 and the Criminal Justice Act 1988 see PARAS 459-474; as to general powers of forfeiture see PARA 480; and as to forfeiture orders under the Misuse of Drugs Act 1971 see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 283. Provision is also made for the enforcement of overseas forfeiture orders: see the Criminal Justice (International Co-operation) Act 1990 ss 9, 10(3), (5) (s 9 amended by the Criminal Justice Act 2003 s 21(1), (2), (3)(h); the Proceeds of Crime Act 2002 s 14(3); and the Serious Organised Crime and Police Act 2005 s 95); and the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005, SI 2005/3180.

9 Powers of Criminal Courts (Sentencing) Act 2000 s 143(4)(a).

10 Powers of Criminal Courts (Sentencing) Act 2000 s 143(4)(b). The date referred to in the text is the date on which the Criminal Justice Act 1988 was passed (ie received the Royal Assent).

11 Powers of Criminal Courts (Sentencing) Act 2000 s 143(5)(a). See *R v Highbury Corner Stipendiary Magistrates' Court, ex p Di Matteo* [1992] 1 All ER 102, 92 Cr App Rep 263, DC.

12 Powers of Criminal Courts (Sentencing) Act 2000 s 143(5)(b).

13 Powers of Criminal Courts (Sentencing) Act 2000 s 143(3). In relation to property which is in the possession of the police by virtue of s 143:

728 (1) the Police (Property) Act 1897 applies, with the following modifications:

21. (a) no application may be made under s 1(1) (see **POLICE** vol 36(1) (2007 Reissue) PARA 520) by any claimant of the property after the end of six months from the date on which the deprivation order in respect of the property was made (Powers of Criminal Courts (Sentencing) Act 2000 s 144(1)(a));

22

22. (b) no such application may succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property (s 144(1)(b)(i)) or, where an order is made under s 143(1) (see the text and notes 1-5), that

he did not know, and had no reason to suspect, that the property was likely to be used for the purpose there mentioned (s 144(1)(b)(ii));

23

- 729 (2) the power to make regulations under the Police (Property) Act 1897 s 2 (disposal of property in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect to it: see **POLICE** vol 36(1) (2007 Reissue) PARA 521) includes power to make regulations for disposal in cases where no application under the Powers of Criminal Courts (Sentencing) Act 2000 s 144(1)(a) (see head (1)(a) above) has been made or no such application has succeeded (s 144(2)).

The regulations may not provide for the vesting in the relevant authority of property in relation to which an order has been made under s 145 (see the text and notes 14-17) (s 144(3)), and nothing in the Police (Property) Act 1897 s 2(2A)(a) (see **POLICE** vol 36(1) (2007 Reissue) PARA 521) or s 2(3) (see **POLICE** vol 36(1) (2007 Reissue) PARA 521) limits the power to make regulations under s 2 by virtue of the Powers of Criminal Courts (Sentencing) Act 2000 s 144(2) (s 144(4)). As to regulations which have been made see the Police (Property) Regulations 1997, SI 1997/1908; and **POLICE** vol 36(1) (2007 Reissue) PARA 522.

A court making an order about property under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 may order that the property be taken into the possession of the Secretary of State (and not of the police): see the UK Borders Act 2007 s 25; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

14 Powers of Criminal Courts (Sentencing) Act 2000 s 145(1)(a).

15 Powers of Criminal Courts (Sentencing) Act 2000 s 145(1)(b).

16 Powers of Criminal Courts (Sentencing) Act 2000 s 145(1).

17 Powers of Criminal Courts (Sentencing) Act 2000 s 145(2). An order under s 145 has no effect: (1) before the end of the period specified in s 144(1)(a) (see note 13) (s 145(3)(a)); or (2) if a successful application under the Police (Property) Act 1897 s 1(1) (see **POLICE** vol 36(1) (2007 Reissue) PARA 520) has been made (Powers of Criminal Courts (Sentencing) Act 2000 s 145(3)(b)).

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B. FORFEITURE OF TERRORIST PROPERTY

(A) FORFEITURE ORDERS UNDER THE

482. Forfeiture on conviction for an offence relating to terrorist property.

The court by or before which a person is convicted of an offence of fund-raising or entering into funding arrangements for terrorist purposes¹, the use and possession of money or other property for the purposes of terrorism², or money laundering in connection with terrorist property³, may⁴ make an order (a 'forfeiture order'⁵) for the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence⁶.

The court by or before which a person is convicted of an offence of weapons training⁷, possessing things and collecting information for the purposes of terrorism⁸, inciting terrorism outside the United Kingdom⁹, the dissemination of terrorist publications¹⁰, the preparation of terrorist acts¹¹ or training for terrorism¹², or an offence involving radioactive devices or materials¹³, may order the forfeiture of any money or other property which was, at the time of the offence, in the possession or control of the person convicted¹⁴, provided that:

- 1623 (1) it had been used for the purposes of terrorism¹⁵;
- 1624 (2) it was intended by that person that it should be used for the purposes of terrorism¹⁶; or
- 1625 (3) the court believes that it will be used for the purposes of terrorism unless forfeited¹⁷.

Forfeiture orders may also be made in respect of ancillary offences¹⁸ and certain offences in relation to which a terrorist connection is to be considered¹⁹.

1 Ie an offence under the Terrorism Act 2000 s 15 or s 17: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 390, 392.

2 Ie an offence under the Terrorism Act 2000 s 16: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 391.

3 Ie an offence under the Terrorism Act 2000 s 18: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 393.

4 Ie in accordance with the Terrorism Act 2000 s 23 (see the text and note 6).

5 A forfeiture order does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time): Terrorism Act 2000 Sch 4 para 2(2).

6 Terrorism Act 2000 s 23(1), (7) (s 23 substituted, s 23A added, by the Counter-Terrorism Act 2008 ss 34, 35). Specific provision is made for the content of a forfeiture order as follows:

730 (1) where a person is convicted of an offence under the Terrorism Act 2000 s 15(1), s 15(2) or s 16, the court may order the forfeiture of any money or other property which, at the time of the

offence, the person had in their possession or under their control and which had been used for the purposes of terrorism or they intended should be used, or had reasonable cause to suspect might be used, for those purposes (s 23(2) (as substituted: see note 6));

- 731 (2) where a person is convicted of an offence under s 15(3) the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which had been used for the purposes of terrorism or which, at that time, they knew or had reasonable cause to suspect would or might be used for those purposes (s 23(3) (as so substituted));
- 732 (3) where a person is convicted of an offence under s 17 or s 18 the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which had been used for the purposes of terrorism or was, at that time, intended by them to be used for those purposes (s 23(4) (as so substituted));
- 733 (4) where a person is convicted of an offence under s 17 the court may order the forfeiture of the money or other property to which the arrangement in question related, and which had been used for the purposes of terrorism or at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for those purposes (s 23(5) (as so substituted)); and
- 734 (5) where a person is convicted of an offence under s 18 the court may order the forfeiture of the money or other property to which the arrangement in question related (s 23(6) (as so substituted)).

As to the meanings of 'terrorism' and 'property' for these purposes see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 383, 388. The Magistrates' Courts Act 1980 s 140 (disposal of non-pecuniary forfeitures: see **MAGISTRATES** vol 29(2) (Reissue) PARA 811), does not apply to a forfeiture under the Terrorism Act 2000: Sch 4 para 2(4).

7 le an offence under the Terrorism Act 2000 s 54: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

8 le an offence under the Terrorism Act 2000 s 57, s 58 or s 58A: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 442, 447.

9 le an offence under the Terrorism Act 2000 s 59, s 60 or s 61: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 469.

10 le an offence under the Terrorism Act 2006 s 2: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 449.

11 le an offence under the Terrorism Act 2006 s 5: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 443.

12 le an offence under the Terrorism Act 2006 s 6: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

13 le an offence under the Terrorism Act 2006 ss 9-11: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 444-446.

14 Terrorism Act 2000 s 23A(1)(a), (2) (as added: see note 6). The Secretary of State may by order amend s 23A(2), but an order adding an offence to s 23A(2) applies only in relation to offences committed after the order comes into force: s 23A(5), (6) (as so added). At the date at which this volume states the law no such order had been made.

15 Terrorism Act 2000 s 23A(1)(b)(i) (as added: see note 6).

16 Terrorism Act 2000 s 23A(1)(b)(ii) (as added: see note 6).

17 Terrorism Act 2000 s 23A(1)(b)(iii) (as added: see note 6).

18 See the Terrorism Act 2000 s 23A(3) (as added: see note 6), which provides that s 23A applies to any ancillary offence (as defined in the Counter-Terrorism Act 2008 s 94: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) in relation to an offence listed in the Terrorism Act 2000 s 23A(2) (see the text and notes 7-14).

19 See the Terrorism Act 2000 s 23A(4) (as added: see note 6), which provides that s 23A also applies to an offence specified in the Counter-Terrorism Act 2008 Sch 2 (offences where terrorist connection to be considered: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) as to which the court dealing with the offence has

determined, in accordance with s 30 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) that the offence has a terrorist connection.

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483. Additional provisions in forfeiture orders.

Before making a forfeiture order¹ a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be² forfeited³. In considering whether to make such an order in respect of any property a court must have regard to the value of the property and the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making)⁴.

Where a court makes a forfeiture order it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular it may:

- 1626 (1) require any of the forfeited property⁵ to be paid or handed over to the proper officer⁶ or to a constable designated for the purpose by the chief officer of police of a police force specified in the order⁷;
- 1627 (2) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds⁸ (if any) to be paid to the proper officer⁹;
- 1628 (3) appoint a receiver¹⁰ to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer¹¹;
- 1629 (4) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property¹², to be paid by the proper officer to a specified person claiming to be the owner or otherwise interested in that money or property¹³.

The proper officer must issue a certificate in respect of a forfeiture order if an application is made by the prosecutor in the proceedings in which the forfeiture order was made¹⁴, the defendant in those proceedings¹⁵, or a person whom the court heard¹⁶ before making the order¹⁷. The certificate must state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order¹⁸.

Where a court makes a forfeiture order in a case where the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage¹⁹ or any such offence is taken into consideration by the court in determining sentence²⁰, the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture²¹.

1 Ie an order under the Terrorism Act 2000 s 23 or s 23A (see Sch 4 para 1 (Sch 4 paras 1, 2(d), 4(2)(c) amended, Sch 4 para 4A added, by the Counter-Terrorism Act 2008 s 37(1), Sch 3 para 5); and PARA 482).

2 Ie under the Terrorism Act 2000 s 23 or s 23A (see PARA 482).

3 Terrorism Act 2000 s 23B(1) (s 23B added by the Counter-Terrorism Act 2008 s 36).

4 Terrorism Act 2000 s 23B(2) (as added: see note 3).

5 'Forfeited property' means the money or other property to which a forfeiture order applies: Terrorism Act 2000 Sch 4 para 1.

6 'Proper officer' means:

735 (1) where the forfeiture order is made by a magistrates' court, the designated officer for that court (Terrorism Act 2000 Sch 4 para 4(1)(a) (Sch 4 para 4(1) amended by the Courts Act 2003 Sch 8 para 388));

736 (2) where the forfeiture order is made by the Crown Court and the defendant was committed to the Crown Court by a magistrates' court, the designated officer for the magistrates' court (Terrorism Act 2000 Sch 4 para 4(1)(b) (as so amended)); and

737 (3) where the forfeiture order is made by the Crown Court and the proceedings were instituted by a bill of indictment preferred by virtue of the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2(2)(b) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1206), the designated officer for the magistrates' court for the place where the trial took place (Terrorism Act 2000 Sch 4 para 4(1)(c) (as so amended)).

7 Terrorism Act 2000 Sch 4 para 2(1)(a).

8 The reference in heads (2) and (4) in the text to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation: Terrorism Act 2000 Sch 4 para 2(3).

9 Terrorism Act 2000 Sch 4 para 2(1)(b).

10 As to the remuneration and liability of such a receiver see the Terrorism Act 2000 Sch 4 para 3.

11 Terrorism Act 2000 Sch 4 para 2(1)(c).

12 See note 5.

13 Terrorism Act 2000 Sch 4 para 2(1)(d) (as amended: see note 1). The specified person must fall within s 23B(1) (see the text and notes 1-3).

14 Terrorism Act 2000 Sch 4 para 4(2)(a).

15 Terrorism Act 2000 Sch 4 para 4(2)(b).

16 Ie under the Terrorism Act 2000 s 23B(1) (see the text and notes 1-3).

17 Terrorism Act 2000 Sch 4 para 4(2)(c) (as amended: see note 1).

18 Terrorism Act 2000 Sch 4 para 4(3).

19 Terrorism Act 2000 Sch 4 para 4A(1)(a) (as added: see note 1).

20 Terrorism Act 2000 Sch 4 para 4A(1)(b) (as added: see note 1).

21 Terrorism Act 2000 Sch 4 para 4A(1) (as added: see note 1). For this purpose the 'proceeds of the forfeiture' means the aggregate amount of any forfeited money and the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation, reduced by the amount of any payment under Sch 4 para 2(1)(d) (see the text and notes 12-13) or Sch 4 para 3(1) (see the text and note 10): Sch 4 para 4A(2) (as so added). The court may make an order under Sch 4 para 4A only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARAS 375-378) under which the offender would have been required to pay compensation of an amount not less than the specified amount: Terrorism Act 2000 Sch 4 para 4A(3) (as so added).

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484. Restraint orders.

The High Court may make a restraint order in two situations¹. First, it may make a restraint order where:

- 1630 (1) proceedings have been instituted in England and Wales for a relevant offence²;
- 1631 (2) the proceedings have not been concluded³;
- 1632 (3) an application for a restraint order is made to the High Court by the prosecutor⁴; and
- 1633 (4) a forfeiture order⁵ has been made, or it appears to the High Court that a forfeiture order may be made, in the proceedings for the offence⁶.

Secondly, the High Court may make a restraint order where:

- 1634 (a) a criminal investigation has been started in England and Wales with regard to a relevant offence⁷;
- 1635 (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence⁸; and
- 1636 (c) it appears to the High Court that a forfeiture order may be made in any proceedings for the offence⁹.

A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with¹⁰ property in respect of which a forfeiture order has been or could be made in any proceedings referred to above¹¹. It may be discharged or varied by the High Court on the application of the person affected by it¹². A restraint order made under heads (1) to (4) above¹³ must be discharged on an application if the proceedings for the offence have been concluded¹⁴. A restraint order made under heads (a) to (c) above¹⁵ must be discharged on an application if no proceedings in respect of relevant offences are instituted¹⁶ within such time as the High Court considers reasonable¹⁷ and all proceedings in respect of such offences have been concluded¹⁸.

A constable may seize any property subject to a restraint order for the purpose of preventing it being removed from Great Britain¹⁹. Property so seized must be dealt with in accordance with the High Court's directions²⁰.

¹ An application for a restraint order may be made to a judge in chambers without notice: Terrorism Act 2000 Sch 4 para 5(4). A restraint order must provide for notice of it to be given to any person affected by the order: Sch 4 para 6(1).

The Land Charges Act 1972 (see **LAND CHARGES**) and the Land Registration Act 2002 (see **LAND REGISTRATION**) apply:

738 (1) in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances, except that no notice may be entered in the register of title under the Land Registration Act 2002 in respect of such orders

(Terrorism Act 2000 Sch 4 para 8(4)(a) (Sch 4 para 8(1) amended by the Land Registration Act 2002 Sch 11 para 38)); and

- 739 (2) in relation to applications for restraint orders as they apply in relation to other pending land actions (Terrorism Act 2000 Sch 4 para 8(1)(b)).

See also the Land Registration Rules 2003, SI 2003/1417, r 93; and **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 1009.

2 Terrorism Act 2000 Sch 4 para 5(1)(a) (Sch 4 paras 1, 5(1)(a), (2)(a), 6(4) amended by the Counter-Terrorism Act 2008 Sch 3 para 5). 'Relevant offence' means an offence under any of the Terrorism Act 2000 ss 15-18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 390-393), an offence to which s 23A (see PARA 482) applies, or, in relation to a restraint order, any offence specified in the Counter-Terrorism Act 2008 Sch 2 (offences where terrorist connection to be considered: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): Terrorism Act 2000 Sch 4 para 1 (as so amended).

3 Terrorism Act 2000 Sch 4 para 5(1)(b). As to when proceedings are concluded see note 14.

4 Terrorism Act 2000 Sch 4 para 5(1)(c).

5 Is an order under the Terrorism Act 2000 s 23 or s 23A: see Sch 4 para 1; and PARA 482.

6 Terrorism Act 2000 Sch 4 para 5(1)(d).

7 Terrorism Act 2000 Sch 4 para 5(2)(a) (Sch 4 paras 5(2), 6(3) substituted, Sch 4 para 5(3) amended, Sch 4 paras 5(6), 6(4) added, by the Anti-terrorism, Crime and Security Act 2001 Sch 2 para 2; Terrorism Act 2000 Sch 4 para 5(2)(a) as amended (see note 2)). 'Criminal investigation' means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence: Terrorism Act 2000 Sch 4 para 5(6) (as so added).

8 Terrorism Act 2000 Sch 4 para 5(2)(b) (as substituted: see note 7).

9 Terrorism Act 2000 Sch 4 para 5(2)(c) (as substituted: see note 7).

10 'Dealing with' includes a reference to removing the property from Great Britain: Terrorism Act 2000 Sch 4 para 5(5). As to the meaning of 'Great Britain' see PARA 9 note 2.

11 Terrorism Act 2000 Sch 4 para 5(3) (as amended: see note 7). The proceedings referred to in the text are those referred to in the Terrorism Act 2000 Sch 4 para 5(1) or (2): see heads (1)-(4) and heads (a)-(c) in the text.

12 Terrorism Act 2000 Sch 4 para 6(2).

13 Is under the Terrorism Act 2000 Sch 4 para 5(1).

14 Terrorism Act 2000 Sch 4 para 6(3) (as substituted: see note 7). Proceedings are concluded: (1) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the forfeited property (Sch 4 para 11(3)(a)); or (2) when no further forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time) (Sch 4 para 11(3)(b)).

15 Is under the Terrorism Act 2000 Sch 4 para 5(2).

16 For the purposes of Sch 4, proceedings for an offence are instituted:

740 (1) when a justice of the peace issues a summons or warrant under the Magistrates' Courts Act 1980 s 1 in respect of the offence (see **MAGISTRATES** vol 29(2) (Reissue) PARAS 522-523) (Terrorism Act 2000 Sch 4 para 11(1)(a));

741 (2) when a person is charged with the offence after being taken into custody without a warrant (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 924-930) (Sch 4 para 11(1)(b));

742 (3) when a voluntary bill of indictment charging a person with the offence is preferred by virtue of the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2(2)(b) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1206) (Terrorism Act 2000 Sch 4 para 11(1)(c)); and

- 743 (4) as from a day to be appointed, when a public prosecutor issues a written charge and requisition in respect of the offence (Sch 4 para 11(1)(aa) (Sch 4 para 11(1)(aa), (2A) prospectively added by the Criminal Justice Act 2003 Sch 36 para 14(1), (2))).

For this purpose 'public prosecutor', 'requisition' and 'written charge' have the same meanings as in the Criminal Justice Act 2003 s 29 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 915): Terrorism Act 2000 Sch 4 para 11(2A) (as so added). At the date at which this volume states the law no day had been appointed for the purposes of the amendments made by the Criminal Justice Act 2003.

Where the application of these provisions would result in there being more than one time for the institution of proceedings they are to be taken to be instituted at the earliest of those times: Terrorism Act 2000 Sch 4 para 11(2).

- 17 Terrorism Act 2000 Sch 4 para 6(4)(a) (as added and amended: see notes 2, 7).
- 18 Terrorism Act 2000 Sch 4 para 6(4)(b) (as added and amended: see notes 2, 7).
- 19 Terrorism Act 2000 Sch 4 para 7(1).
- 20 Terrorism Act 2000 Sch 4 para 7(2).

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485. Compensation orders.

Where a restraint order¹ is discharged on the ground that no proceedings in respect of relevant offences² are instituted within a reasonable time³, compensation may be ordered to be paid⁴.

Compensation may be ordered to be paid where a forfeiture order⁵ or a restraint order is made in relation to proceedings for a relevant offence which:

- 1637 (1) do not result in conviction for a relevant offence⁶;
- 1638 (2) result in conviction for such a relevant offence in respect of which the person convicted is subsequently pardoned⁷; or
- 1639 (3) result in conviction for such a relevant offence which is subsequently quashed⁸.

A person who had an interest in any property subject to the restraint order may apply to the High Court for compensation⁹. The High Court may order compensation to be paid to the applicant if satisfied:

- 1640 (a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence¹⁰;
- 1641 (b) that the person in default was or was acting as a member of a police force, or was a member of the Crown Prosecution Service or was acting on behalf of the Service¹¹;
- 1642 (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order¹²; and
- 1643 (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid¹³.

The High Court may not order compensation to be paid where it appears that proceedings would have been instituted even if the serious default had not occurred¹⁴.

Where a forfeiture order or a restraint order is made in or in relation to proceedings for a relevant offence¹⁵, and the proceedings result in a conviction which is subsequently quashed on appeal¹⁶ following the deproscription of a proscribed organisation¹⁷, a person who had an interest in any property which was subject to the order may apply to the High Court for compensation¹⁸. The High Court may order compensation to be paid to the applicant if satisfied that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order¹⁹ and that, having regard to all the circumstances, it is appropriate to order compensation to be paid²⁰.

1 See PARA 484.

2 As to the meaning of 'relevant offence' see PARA 484 note 2.

3 ie where a restraint order is discharged under the Terrorism Act 2000 Sch 4 para 6(4)(a) (see PARA 484).

4 Terrorism Act 2000 Sch 4 para 9(1) (Sch 4 para 9(1) amended by the Anti-terrorism, Crime and Security Act 2001 Sch 2 para 2).

5 le an order under the Terrorism Act 2000 s 23 or s 23A: see Sch 4 para 1; and PARA 482.

6 Terrorism Act 2000 Sch 4 para 9(2)(a) (Sch 4 paras 9(2), 10(1)(a) amended by the Counter-Terrorism Act 2008 Sch 3 para 5).

7 Terrorism Act 2000 Sch 4 para 9(2)(b) (as amended: see note 6).

8 Terrorism Act 2000 Sch 4 para 9(2)(c) (as amended: see note 6).

9 Terrorism Act 2000 Sch 4 para 9(3)

10 Terrorism Act 2000 Sch 4 para 9(4)(a).

11 Terrorism Act 2000 Sch 4 para 9(4)(b). If compensation is ordered, it is to be paid out of the police fund of the police force in question where the person in default was or was acting as a member of a police force, and by the Director of Public Prosecutions where the person in default was a member of the Crown Prosecution Service or was acting on behalf of it: Sch 4 para 9(6).

12 Terrorism Act 2000 Sch 4 para 9(4)(c).

13 Terrorism Act 2000 Sch 4 para 9(4)(d).

14 Terrorism Act 2000 Sch 4 para 9(5).

15 Terrorism Act 2000 Sch 4 para 10(1)(a) (as amended: see note 6).

16 le under the Terrorism Act 2000 s 7(2), (5): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386.

17 Terrorism Act 2000 Sch 4 para 10(1)(b).

18 Terrorism Act 2000 Sch 4 para 10(2).

19 Terrorism Act 2000 Sch 4 para 10(3)(a). If compensation is ordered to be paid, it is to be paid by the Secretary of State: Sch 4 para 10(4). As to the meaning of 'property' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 388.

20 Terrorism Act 2000 Sch 4 para 10(3)(b).

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486. Freezing orders.

As from a day to be appointed¹, if any of the property to which an application for a restraint order² relates is property in a participating country³, the applicant may ask the High Court to make a certificate which is made for the purposes of the relevant Framework Decision⁴ on the execution in the European Union of orders freezing property, and gives specified information⁵.

The High Court may make such a certificate if it makes a restraint order in relation to property in the participating country and it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence⁶ or is the proceeds of the commission of a listed offence⁷.

If the High Court makes a certificate the restraint order must provide for notice of the certificate to be given to the person affected by it, and specified provisions⁸ apply to the certificate as they apply to the restraint order⁹.

If a certificate is made, the restraint order and the certificate are to be sent to the Secretary of State for forwarding to a court exercising jurisdiction in the place where the property is situated, or any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind¹⁰.

An overseas freezing order¹¹ is an order prohibiting dealing with property:

1644 (1) which is in the United Kingdom¹²;

1645 (2) which the appropriate court or authority¹³ considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence¹⁴; and

1646 (3) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property¹⁵,

and in respect of which specified requirements¹⁶ are met¹⁷.

Where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order, the Secretary of State must send a copy of the overseas freezing order to the High Court and to the Director of Public Prosecutions¹⁸. The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights¹⁹. Where the High Court decides to give effect to an overseas freezing order, it must register the order in that court, and provide for notice of the registration to be given to any person affected by it²⁰.

1 The Terrorism Act 2000 Sch 4 paras 11A-11G (see the text and notes 2-20) are added by the Crime (International Co-operation) Act 2003 Sch 4 paras 1, 3, as from a day to be appointed. At the date at which this volume states the law no day had been appointed for these provisions to come into force.

2 As to restraint orders see PARA 484.

3 A participating country means (1) a country other than the United Kingdom which is a member state on a day appointed for the commencement of the Crime (International Co-operation) Act 2003 Sch 4; and (2) any other member state designated by an order made by the Secretary of State: Terrorism Act 2000 Sch 4 para 11A(1), (7) (prospectively added: see note 1). 'Country' includes territory: Sch 4 para 11A(8) (as so prospectively added). As to the meaning of 'United Kingdom' see PARA 9 note 2.

4 Ie the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22 July 2003: Terrorism Act 2000 Sch 4 para 11A(2) (prospectively added: see note 1).

5 Terrorism Act 2000 Sch 4 para 11B(1), (3) (prospectively added: see note 1). 'Specified information', in relation to a certificate under Sch 4 para 11B or Sch 4 para 11D means any information required to be given by the form of certificate annexed to the relevant Framework Decision, or any information prescribed by an order made by the Secretary of State: Sch 4 para 11A(5), (6) (as so prospectively added).

6 A listed offence means an offence described in art 3(2) of the relevant Framework Decision, or a prescribed offence or an offence of a prescribed description: Terrorism Act 2000 Sch 4 para 11A(3) (prospectively added: see note 1). An order relating to a prescribed offence or an offence of a prescribed description which, for the purposes of Sch 4 para 11D prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part: Sch 4 para 11A(4) (as so prospectively added).

7 Terrorism Act 2000 Sch 4 para 11B(2) (prospectively added: see note 1). Section 14(2)(a) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 393) applies for the purposes of determining what are the proceeds of the commission of an offence: Sch 4 para 11A(9) (as so prospectively added).

8 Ie the Terrorism Act 2000 Sch 4 para 6(2)-(4): see PARA 484.

9 Terrorism Act 2000 Sch 4 para 11B(4) (prospectively added: see note 1).

10 Terrorism Act 2000 Sch 4 para 11C(1) (prospectively added: see note 1). The restraint order and the certificate must be accompanied by a forfeiture order (see PARA 482), unless the certificate indicates when the court expects a forfeiture order to be sent: Sch 4 para 11C(2) (prospectively added: see note 1). The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English): Sch 4 para 11C(3) (as so prospectively added). The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it; and the signature may be an electronic signature: Sch 4 para 11C(4) (as so prospectively added). If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Secretary of State for forwarding to a court exercising jurisdiction in the place where the property is situated, or any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind: Sch 4 para 11C(1), (5) (as so prospectively added).

11 References in the Terrorism Act 2000 Sch 4 paras 11E-11G to an overseas freezing order include its accompanying certificate: Sch 4 para 11D(9) (prospectively added: see note 1).

12 Terrorism Act 2000 Sch 4 para 11D(2)(a) (prospectively added: see note 1).

13 An appropriate court or authority in a participating country in relation to an overseas freezing order is a court exercising criminal jurisdiction in the country, a prosecuting authority in the country, any other authority in the country which appears to the Secretary of State to have the function of making such orders: Terrorism Act 2000 Sch 4 para 11D(8) (prospectively added: see note 1).

14 Terrorism Act 2000 Sch 4 para 11D(2)(b) (prospectively added: see note 1).

15 Terrorism Act 2000 Sch 4 para 11D(2)(c) (prospectively added: see note 1).

16 The specified requirements are that:

744 (1) the action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism (Terrorism Act 2000 Sch 4 para 11D(3) (prospectively added: see note 1));

745 (2) the order must relate to criminal proceedings instituted in the participating country, or a criminal investigation being carried on there (Sch 4 para 11D(4) (as so prospectively added));

746 (3) the order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the

Secretary of State has the information in question (Sch 4 para 11D(5) (as so prospectively added));

747 (4) the certificate must (a) be signed by or on behalf of the court or authority which made or confirmed the order (and the signature may be an electronic signature); (b) include a statement as to the accuracy of the information given in it; (c) if it is not in English, include a translation of it into English (or, if appropriate, Welsh) (Sch 4 para 11D(6) (as so prospectively added));

748 (5) the order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent (Sch 4 para 11D(7) (as so prospectively added)).

17 Terrorism Act 2000 Sch 4 para 11D(2) (prospectively added: see note 1).

18 Terrorism Act 2000 Sch 4 paras 11D(1), 11E(1) (prospectively added: see note 1). The court must consider the overseas freezing order on its own initiative within a period prescribed by rules of court: Sch 4 para 11E(2) (as so prospectively added). The High Court may postpone giving effect to an overseas freezing order in respect of any property (1) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom; or (2) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with: Sch 4 para 11F (as so prospectively added). Before giving effect to the overseas freezing order the court must give the Director of Public Prosecutions an opportunity to be heard: Sch 4 paras 11D(1), 11E(3) (as so prospectively added).

19 Terrorism Act 2000 Sch 4 paras 11D(1), 11E(4) (prospectively added: see note 1). As to Convention rights under the Human Rights Act 1998 see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

20 Terrorism Act 2000 Sch 4 para 11G(1) (prospectively added: see note 1). For the purpose of enforcing an overseas freezing order registered in the High Court, the order is to have effect as if it were an order made by that court: Sch 4 para 11G(2) (as so prospectively added). A constable may seize property subject to an overseas freezing order for the purpose of preventing it from being removed from Great Britain: Sch 4 paras 7, 11G(3) (as so prospectively added). The High Court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Director of Public Prosecutions or any other person affected by it, if or to the extent that the court is of the opinion that giving effect to the order would be incompatible with any of the Convention rights under the Human Rights Act 1998, or that the order has ceased to have effect in the participating country: Sch 4 paras 11E(4), 11G(4) (as so prospectively added). Her Majesty may by Order in Council make further provision for the enforcement in England and Wales of registered overseas freezing orders: Sch 4 para 11G(5) (as so prospectively added).

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487. Enforcement of forfeiture or restraint orders made outside England and Wales.

A forfeiture order¹ or restraint order² made in Scotland, Northern Ireland, the Channel Islands or the Isle of Man, or an order relating to its discharge or variation, has effect in the law of England and Wales³.

Her Majesty may by Order in Council make provision for the purpose of enabling the enforcement in England and Wales of an 'external order' (that is, an order⁴ which is made in a country or territory designated for this purpose by the Order in Council, and which makes relevant provision)⁵.

1 As to forfeiture orders see PARA 482.

2 As to restraint orders see PARA 484.

3 Terrorism Act 2000 Sch 4 paras 12, 13(1). As to the provisions relating to Scottish and Northern Ireland orders see Sch 4 paras 12, 15-44. Such orders can be enforced only in accordance with the Terrorism Act 2000 Sch 4 para 13 and any provision made by rules of court: Sch 4 para 13(2). Rules of court govern the registration of such orders: see Sch 4 para 13(3), (4). As to the registration of forfeiture orders see Sch 4 para 13(5) (amended by the Courts Act 2003 Sch 8 para 388) and as to the registration of restraint orders see the Terrorism Act 2000 Sch 4 para 13(6) (amended by the Constitutional Reform Act 2005 Sch 11 para 1(2)). The High Court has the same power in relation to the order's enforcement as if the order had originally been made in the High Court: see the Terrorism Act 2000 Sch 4 para 13(7), (8). As to the documents to be received in evidence see Sch 4 para 13(9).

4 As from a day to be appointed, this reference to an order is a reference to an order other than an overseas freezing order within the meaning of the Terrorism Act 2000 Sch 4 para 11D (PARA 486). At the date at which this volume states the law no such day had been appointed.

5 See the Terrorism Act 2000 Sch 4 para 14(1), (2) (prospectively amended by the Crime (International Co-operation) Act 2003 Sch 4 paras 1, 4). 'Relevant provision' means (1) provision for the forfeiture of terrorist property (an 'external forfeiture order'); or (2) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country or territory (an 'external restraint order'): Terrorism Act 2000 Sch 4 para 14(3). As to the meaning of 'terrorist property' see s 14(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 393.

An Order in Council under Sch 4 para 14 may, in particular, include provision:

- 749 (a) which for the purpose of facilitating the enforcement of any external order that may be made, has effect at times before there is an external order to be enforced (Sch 4 para 14(4)(a));
- 750 (b) for matters corresponding to those for which provision is made by, or can be made under, Sch 4 para 13(1)-(8) in relation to the orders to which Sch 4 para 13 applies (Sch 4 para 14(4)(b));
- 751 (c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council (Sch 4 para 14(4)(c)).

Such an Order in Council may also make provision with respect to anything falling to be done on behalf of the United Kingdom in a designated country or territory in relation to proceedings in that country or territory for or in connection with the making of an external order: Sch 4 para 14(5). The Terrorism Act 2000 (Enforcement of External Orders) Order 2001, SI 2001/3927, makes provision for the purpose of enabling the enforcement in England and Wales (and the rest of the United Kingdom) of an external order made by a court in Austria,

Belgium, Canada, Denmark, Finland, France, Germany, Greece, India, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United States of America.

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488. Protection of creditors against forfeiture.

During the six-month period beginning with the making of a forfeiture order¹, neither the money to which the order applies nor the money which represents any property to which the order applies may be finally disposed of².

Where:

- 1647 (1) before or after a forfeiture order is made, the commencement of an insolvency³ occurs in qualifying insolvency proceedings⁴;
- 1648 (2) an insolvency practitioner⁵ would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies⁶; and
- 1649 (3) he gives written⁷ notice to the relevant officer⁸ of the matters referred to in head (1) and (2) above before the end of the period of six months beginning with the making of the forfeiture order⁹,

the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings, and the proceeds of sale¹⁰ of that property, cease to be subject to the forfeiture order and any ancillary order¹¹, and must be dealt with in the insolvency proceedings as if the forfeiture order had never been made¹².

Where by virtue of this provision property falls to be dealt with in insolvency proceedings, the Secretary of State is taken to be a creditor in those proceedings to the amount or value of the property¹³. Except in a sequestration, his debt ranks after the debts of all other creditors, and must not be paid until they have been paid in full with interest under the relevant provision¹⁴.

Property which has ceased to be subject to a forfeiture order by virtue of the provisions described above in consequence of the making of a bankruptcy order or an award of sequestration becomes again subject to the forfeiture order and, if applicable, any ancillary order if the bankruptcy order is annulled or the award of sequestration is recalled or reduced¹⁵.

Where under the provisions described above money or other property falls to be dealt with in insolvency proceedings as if the forfeiture order had never been made, the relevant officer may deduct allowable forfeiture expenses¹⁶ from that money and retain so much of that property as he considers necessary for the purpose of realising it and deducting allowable forfeiture expenses from the proceeds of realisation¹⁷.

1 ie an order under the Terrorism Act 2000 s 23 or s 23A (see PARA 482), a forfeiture order of the Channel Islands or Isle of Man within the meaning of Sch 4 (see PARA 487), or an external forfeiture order enforceable in England and Wales or Scotland or Northern Ireland by virtue of an Order in Council made under Sch 4 para 14 (see PARA 487): Sch 4 para 45 (Sch 4 para 45 amended by the Counter-Terrorism Act 2000 Sch 3 para 5).

2 Terrorism Act 2000 Sch 4 para 46(1). In England and Wales, money is finally disposed of when it is paid to the Lord Chancellor in accordance with the Courts Act 2003 s 38 (see **COURTS**) or to the Secretary of State in accordance with the provisions relating to the payment of the balance remaining, after the required payments, under a registered forfeiture order made in another part of the British Isles: Terrorism Act 2000 Sch 4 para 46(2)(a) (s 46(2) amended by the Courts Act 2003 Sch 8 para 388(1), (4)(a)). As to provision for Scotland and Northern Ireland see the Terrorism Act 2000 Sch 4 para 46(2)(b), (c).

3 'Commencement of an insolvency' means:

- 752 (1) the making of a bankruptcy order (Terrorism Act 2000 Sch 4 para 47(5)(a));
- 753 (2) the award of sequestration (s 47(5)(b));
- 754 (3) in the case of an insolvent estate of a deceased person, the making of an insolvency administration order (s 47(5)(c)); or
- 755 (4) in the case of a company, the passing of a resolution for its winding up, or where no such resolution has been passed, the making of an order by the court for the winding up of the company (s 47(5)(d)).

4 Terrorism Act 2000 Sch 4 para 47(1)(a). 'Qualifying insolvency proceedings' means:

- 756 (1) any proceedings under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19)) for the winding up of a company or an unregistered company and includes any voluntary winding up of a company under the Insolvency Act 1986 Pt IV (ss 73-219) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, Pt V (Terrorism Act 2000 Sch 4 para 53(2)(a));
- 757 (2) any proceedings in England and Wales or Northern Ireland under or by virtue of the Insolvency Act 1986 s 420 or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, art 364 for the winding up of an insolvent partnership (Terrorism Act 2000 Sch 4 para 53(2)(b));
- 758 (3) any proceedings in bankruptcy or, in Scotland, any sequestration of a debtor's estate (Sch 4 para 53(2)(c)); or
- 759 (4) any proceedings in England and Wales or in Northern Ireland under or by virtue of the Insolvency Act 1986 s 421 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 823) or the Insolvency (Northern Ireland) Order 1989, SI 1989/2405, art 365 in relation to the insolvent estate of a deceased person (Terrorism Act 2000 Sch 4 para 53(2)(d)).

5 'Insolvency practitioner' means a person acting in any qualifying insolvency proceedings in any part of the United Kingdom as:

- 760 (1) a liquidator of a company or partnership (Terrorism Act 2000 Sch 4 para 53(1)(a));
- 761 (2) a trustee in bankruptcy (Sch 4 para 53(1)(b));
- 762 (3) the permanent or interim trustee on the debtor's estate (Sch 4 para 53(1)(c));
- 763 (4) an administrator of the insolvent estate of a deceased person (Sch 4 para 53(1)(d)); or
- 764 (5) a receiver or manager of any property (Sch 4 para 53(1)(e)).

This definition does not apply to Sch 4 para 51 (see PARA 489): Sch 4 para 53(1).

6 Terrorism Act 2000 Sch 4 para 47(1)(b).

7 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 413.

8 Where the forfeiture order in question is made in England and Wales, the 'relevant officer' is the proper officer within the meaning given in the Terrorism Act 2000 Sch 4 para 4 (see PARA 483): see Sch 4 para 53(3). In any case where the forfeiture order is made outside England, Wales, Scotland or Northern Ireland, the relevant officer is the appropriate officer of the High Court: Sch 4 para 53(3)(a), (c). As to Northern Ireland and Scotland see Sch 4 para 53(3)(b), (4).

9 Terrorism Act 2000 Sch 4 para 47(1)(c).

10 The reference to the 'proceeds of sale' is a reference to proceeds after deduction of the costs of sale: Terrorism Act 2000 Sch 4 para 53(5).

11 Ie an order made in connection with a forfeiture, other than the forfeiture order: Terrorism Act 2000 Sch 4 para 45.

12 Terrorism Act 2000 Sch 4 para 47(1), (2), (3). The property which ceases to be subject to the forfeiture order and any ancillary order, and which must be dealt with in the insolvency proceedings as if the forfeiture

order had never been made, is the balance remaining after the relevant officer has exercised his powers under Sch 4 para 50(1) (see the text and note 17): Sch 4 para 47(4)(a). Where the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations in relation to property, the provision that property ceases to be subject to the forfeiture order and any ancillary order, and must be dealt with in the insolvency proceedings as if the forfeiture order had never been made, does not take effect until those obligations have been discharged: Sch 4 para 47(4)(b).

13 Terrorism Act 2000 Sch 4 para 48(1).

14 Terrorism Act 2000 Sch 4 para 48(2). 'Relevant provision' means, in relation to the winding up of a company in England, Wales or Scotland, the Insolvency Act 1986 s 189(2) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 827), and, in relation to a bankruptcy, s 328(4) (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 585): see the Terrorism Act 2000 Sch 4 para 48(3)(a), (b). As to the relevant provision in relation to Scotland and Northern Ireland see Sch 4 para 48(3)(c), (d). Note that the provisions of Sch 4 para 48(2), (3) apply notwithstanding any provision in or made under any other enactment: Sch 4 para 48(5). As to sequestration in Scotland see Sch 4 para 48(4).

15 Terrorism Act 2000 Sch 4 para 49(1), (2). Where the property is money or has been converted into money the relevant court must make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property and the specified property becomes subject to the forfeiture order, and any applicable ancillary order, in place of the property: Sch 4 para 49(3). The 'relevant court' means the court which ordered the annulment of the bankruptcy, or recalled or reduced the award of sequestration: Sch 4 para 49(4).

16 'Allowable forfeiture expenses':

765 (1) means expenses incurred in relation to the forfeited property by the relevant officer (Terrorism Act 2000 Sch 4 para 50(3)(a));

766 (2) means expenses incurred in relation to the forfeited property by a receiver, administrator or other person appointed by the relevant officer (Sch 4 para 50(3)(b));

767 (3) means expenses incurred in relation to the forfeited property by any person appointed or directed to deal with any property under Terrorism Act 2000 Sch 4 para 16 (see PARA 487) (Sch 4 para 50(3)(c)); and

768 (4) includes sums paid or required to be paid under Sch 4 para 2(1)(d) (see PARA 483), Sch 4 para 16(1)(c) (Scotland) or Sch 4 para 30(1)(d) (Northern Ireland) (Sch 4 para 50(3)(d)).

17 Terrorism Act 2000 Sch 4 para 50(1). Where property is delivered up and the relevant officer has not made provision under Sch 4 para 50(1) for all the allowable forfeiture expenses then a person who has incurred allowable forfeiture expenses for which provision has not been made has a claim to their value in the insolvency proceedings and the expenses in question are to be treated for the purposes of the insolvency proceedings as if they were expenses of those proceedings: Sch 4 para 50(2).

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489. Protection of insolvency practitioners.

An insolvency practitioner¹ who seizes or disposes of property which is subject to a forfeiture order² or a restraint order³ is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except in so far as the loss or damage is caused by his negligence, if he reasonably believes that he is entitled to do so in the exercise of his functions and he would be so entitled if the property were not subject to a forfeiture order or a restraint order⁴.

The insolvency practitioner has a lien on the property seized or the proceeds or its sale for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings⁵.

1 For these purposes, 'insolvency practitioner' in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom: Terrorism Act 2000 Sch 4 para 51(5). For the purpose of Sch 4 para 51(5), any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland is to be determined in accordance with the Insolvency Act 1986 s 388 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 43), subject to specified modifications: Terrorism Act 2000 Sch 4 para 51(6). For the purpose of Sch 4 para 51(5), any question whether a person is acting as an insolvency practitioner in Northern Ireland is to be determined in accordance with the Insolvency (Northern Ireland) Order 1989, SI 1989/2405 (NI 19), art 3, subject to specified modifications: Terrorism Act 2000 Sch 4 para 51(7).

2 As to the meaning of 'forfeiture order' for these purposes see PARA 488 note 1.

3 Ie an order under the Terrorism Act 2000 Sch 4 para 5 (or the corresponding order in Scotland or Northern Ireland under Sch 4 para 18 or Sch 4 para 33), a restraint order of the Channel Islands or Isle of Man, or an external restraint order enforceable in England and Wales or Scotland or Northern Ireland by virtue of an Order in Council: Sch 4 para 45 (prospectively amended by the Crime (International Co-operation) Act 2003 Sch 4 para 9).

4 Terrorism Act 2000 Sch 4 para 51(1), (2). Provision is made to ensure that an Islands or external insolvency practitioner (ie a person exercising under the insolvency law of a relevant country or territory functions corresponding to those exercised by insolvency practitioners under the insolvency law of any part of the United Kingdom) has the same rights in relation to property situated in England, Wales, Scotland or Northern Ireland as he would have if he were an insolvency practitioner in that part of the United Kingdom: see Sch 4 para 52.

5 Terrorism Act 2000 Sch 4 para 51(3). As to lien see generally **LIEN**. See also note 4.

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(B) ADDITIONAL POWERS OF FORFEITURE UNDER THE

490. Forfeiture of property associated with terrorist activity.

In addition to the power to make forfeiture orders¹:

- 1650 (1) a court by or before which a person is convicted of an offence of weapons training² may order the forfeiture of anything that the court considers to have been in the possession of the person for purposes connected with the offence³;
- 1651 (2) a court by or before which a person is convicted of an offence of possessing things for the purposes of terrorism⁴ may order the forfeiture of any article that is the subject-matter of the offence⁵; and
- 1652 (3) a court by or before which a person is convicted of an offence of collecting information for the purposes of terrorism⁶ may order the forfeiture of any document or record⁷ relevant to the offence⁸.

Before making such an order a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under these provisions⁹; and such an order does not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time)¹⁰. Where a court makes such an order it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited¹¹.

1 Ie in addition to the powers conferred by the Terrorism Act 2000 s 23A (see PARA 482): s 120A(6) (s 120A added by the Counter-Terrorism Act 2000 s 38(1)).

2 Ie an offence under the Terrorism Act 2000 s 54: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

3 Terrorism Act 2000 s 120A(1) (as added: see note 1).

4 Ie an offence under the Terrorism Act 2000 s 57: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 442.

5 Terrorism Act 2000 s 120A(1) (as added: see note 1).

6 Ie an offence under the Terrorism Act 2000 s 58 or s 58A: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 447.

7 Ie any document or record containing information of the kind mentioned in s 58(1)(a) or s 58A(1)(a) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 447): Terrorism Act 2000 s 120A(1) (as added: see note 1).

8 Terrorism Act 2000 s 120A(1) (as added: see note 1).

9 Terrorism Act 2000 s 120A(2) (as added: see note 1).

10 Terrorism Act 2000 s 120A(3) (as added: see note 1).

11 Terrorism Act 2000 s 120A(4) (as added: see note 1). Provision made by virtue of s 120A(4) may be varied at any time by the court that made it: s 120A(5) (as so added).

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(C) FORFEITURE ORDERS UNDER THE

491. Making of forfeiture orders.

A court before which a person is convicted of an offence¹ relating to the giving or receiving of instruction or training in:

- 1653 (1) the making, handling or use of a noxious substance², or of substances of a description of such substances³;
- 1654 (2) the use of any method or technique for doing anything else that is capable of being done for the purposes of terrorism⁴, in connection with the commission or preparation of an act of terrorism⁵ or Convention offence⁶ or in connection with assisting the commission or preparation by another of such an act or offence⁷; or
- 1655 (3) the design or adaptation for the purposes of terrorism, or in connection with the commission or preparation of an act of terrorism or Convention offence, of any method or technique for doing anything⁸,

may order the forfeiture of anything the court considers to have been in the person's possession for purposes connected with the offence⁹.

¹ ie an offence under the Terrorism Act 2006 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439).

² As to the meaning of 'noxious substance' see the Terrorism Act 2006 s 6(7); **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

³ See the Terrorism Act 2006 s 6(1), (2), (3)(a); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

⁴ As to the meaning of 'terrorism' see the Terrorism Act 2000 s 1; the Terrorism Act 2006 s 20(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383.

⁵ As to the meaning of 'act of terrorism' see the Terrorism Act 2006 s 20(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

⁶ As to the meaning of 'Convention offence' see the Terrorism Act 2006 Sch 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 384.

⁷ See the Terrorism Act 2006 s 6(1), (2), (3)(b); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

⁸ See the Terrorism Act 2006 s 6(1), (2), (3)(c); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439.

⁹ Terrorism Act 2006 s 7(1). The power of forfeiture under s 7 is in addition to any power of forfeiture under the Terrorism Act 2000 s 23A (see PARA 482): Terrorism Act 2006 s 7(7) (added by the Counter-Terrorism Act 2008 s 38(2)). Such an order may not be made so as to come into force at any time before there is no further possibility (disregarding any power to grant permission for the bringing of an appeal out of time) of the order's being varied or set aside on appeal: Terrorism Act 2006 s 7(3). Where a court makes such an order it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture (s 7(4)); and that provision may include, in particular, provision relating to the retention, handling, destruction or other disposal of

what is forfeited (s 7(5)). Provision made by virtue of these provisions may be varied at any time by the court that made it: s 7(6).

Before making such an order in relation to anything the court must give an opportunity of being heard to any person (in addition to the convicted person) who claims to be the owner of that thing or otherwise to have an interest in it: s 7(2).

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(D) FINANCIAL INFORMATION ORDERS AND ACCOUNT MONITORING ORDERS

492. Financial information orders.

A financial information order¹ made in relation to a terrorist investigation² authorises a constable named in the order to require a financial institution³ to which the order applies to provide customer information⁴ for the purposes of the investigation⁵. The information must be provided in such manner and within such time as the constable may specify, and notwithstanding any restriction on the disclosure of information imposed by statute or otherwise⁶. An institution which fails to comply with a financial information order is guilty of an offence⁷. It is, however, a defence for the institution to prove⁸ that the information required was not in the institution's possession, or that it was not reasonably practicable for the institution to comply with the requirement⁹.

1 Ie an order under the Terrorism Act 2000 Sch 6 para 1(1).

2 As to the meaning of 'terrorist investigation' see the Terrorism Act 2000 s 32; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 407.

3 'Financial institution' means:

769 (1) a person who has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 348 et seq) to accept deposits (Terrorism Act 2000 Sch 6 para 6(1)(a) (substituted by SI 2001/3649));

770 (2) a credit union (within the meaning of the Credit Unions Act 1979 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2402 et seq) or the Credit Unions (Northern Ireland) Order 1985, SI 1985/1205 (NI 12)) (Terrorism Act 2000 Sch 6 para 6(1)(c));

771 (3) a person carrying on a 'relevant regulated activity' (ie dealing in investments as principal or as agent, arranging deals in investments, operating a multilateral trading activity, managing investments, safeguarding and administering investments, sending dematerialised instructions, establishing etc collective investment schemes, advising on investments) (Sch 6 para 6(1)(d), (1A) (Sch 6 para 6(1)(d) substituted, and Sch 6 para 6(1A) added, by SI 2001/3649; Terrorism Act 2000 Sch 6 para 6(1A) amended by SI 2006/3384));

772 (4) the National Savings Bank (Terrorism Act 2000 Sch 6 para 6(1)(e));

773 (5) a person who carries out an activity for the purposes of raising money authorised to be raised under the National Loans Act 1968 under the auspices of the Director of National Savings (Terrorism Act 2000 Sch 6 para 6(1)(f));

774 (6) a European institution carrying on a home regulated activity (within the meaning of EC Council Directive 2006/48 (OJ L177, 30.06.2006, p 1) relating to the taking up and pursuit of the business of credit institutions) (Terrorism Act 2000 Sch 6 para 6(1)(g) (amended by SI 2006/3221));

775 (7) a person carrying out an activity specified in any of points 1-12 and 14 of Annex 1 to EC Council Directive 2006/48 (OJ L177, 30.06.2006, p 1) (Terrorism Act 2000 Sch 6 para 6(1)(h) (amended by SI 2000/2952)); and

- 776 (8) a person who carries on an insurance business in accordance with an authorisation pursuant to art 4 or art 51 of EC Council Directive 2002/83 (OJ L345, 19.12.2002, p 1) concerning life insurance (Terrorism Act 2000 Sch 6 para 6(1)(i) (amended by SI 2004/3379)).

Head (1) of this definition and the definition of 'relevant regulated activity' in the Terrorism Act 2000 Sch 6 para 6(1A) must be read with the Financial Services and Markets Act 2000 s 22 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84), any relevant order under that provision, and Sch 2 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 84-85): Terrorism Act 2000 Sch 6 para 6(1B) (added by SI 2001/3649).

The Secretary of State may by order provide for a class of person to be a financial institution, or to cease to be a financial institution, for the purposes of the Terrorism Act 2000 Sch 6: Sch 6 para 6(2).

An institution which ceases to be a financial institution for the purposes of Sch 6 continues to be treated as a financial institution for the purposes of any requirement under Sch 6 para 1 to provide customer information (see note 5) which relates to a time when the institution was a financial institution: Sch 6 para 6(3).

4 'Customer information' means:

- 777 (1) information whether a business relationship exists or existed between a financial institution and a particular person (a 'customer') (Sch 6 para 7(1)(a));
- 778 (2) a customer's account number (Sch 6 para 7(1)(b));
- 779 (3) a customer's full name (Sch 6 para 7(1)(c));
- 780 (4) a customer's date of birth (Sch 6 para 7(1)(d));
- 781 (5) a customer's address or former address (Sch 6 para 7(1)(e));
- 782 (6) the date on which a business relationship between a financial institution and a customer begins or ends (Sch 6 para 7(1)(f));
- 783 (7) any evidence of a customer's identity obtained by a financial institution in pursuance of or for the purposes of any legislation relating to money laundering (Sch 6 para 7(1)(g)); and
- 784 (8) the identity of a person sharing an account with a customer (Sch 6 para 7(1)(h)).

For the purposes of Sch 6 there is a business relationship between a financial institution and a person if (and only if) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them, and the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made: Sch 6 para 7(2). The Secretary of State may by order provide for a class of information to be customer information for the purposes of Sch 6 or to cease to be customer information for the purposes of Sch 6: Sch 6 para 7(3).

5 Terrorism Act 2000 Sch 6 para 1(1) (Sch 6 para 1(1) amended, Sch 6 para 1(1A) added, by the Anti-terrorism, Crime and Security Act 2001 Sch 2 para 6). The order may provide that it applies to all financial institutions, a particular description (or particular descriptions) of financial institution, or a particular institution or particular institutions: Terrorism Act 2000 Sch 6 para 6(1A) (as so added). Customer information provided by a financial institution under Sch 6 is not admissible in evidence in criminal proceedings against the institution or any of its officers or employees (Sch 6 para 9(1)), except in relation to proceedings for an offence under Sch 6 para 1(3) (see the text and note 7) (including proceedings brought by virtue of Sch 6 para 8 (see note 7)) (Sch 6 para 9(2)).

6 Terrorism Act 2000 Sch 6 para 1(2).

7 Terrorism Act 2000 Sch 6 para 1(3). The offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale: Sch 6 para 1(5). As to the standard scale see PARA 142. Where an offence is committed by an institution and it is proved that the offence was committed with the consent or connivance of an officer of the institution or was attributable to neglect on the part of an officer of the institution, the officer, as well as the institution, is guilty of the offence (see Sch 6 para 8(1), (2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 38), and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both (Sch 6 para 8(3)). As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 51 weeks (see the Criminal Justice Act 2003 s 281(4), (5), (7) (not yet in force)), although this does not affect the penalty for any offence committed before that day (s 281(6)(b) (not yet in force)). At the date at which this volume states the law no such day had been appointed. In the case of an institution which is a body corporate, 'officer' includes a director, manager or secretary, a person purporting to act as a director, manager or secretary, and, if the affairs of the body are managed by its members, a member: Terrorism Act 2000 Sch 6 para 8(4). In the case of an institution which is a partnership, 'officer' means a partner: Sch 6 para

8(5). In the case of an institution which is an unincorporated association (other than a partnership), 'officer' means a person concerned in the management or control of the association: Sch 6 para 8(6).

Proceedings for this offence require the consent of the Director of Public Prosecutions: s 117(1), (2)(a). Where, however, it appears to the Director of Public Prosecutions that an offence to which s 117 applies has been committed outside the United Kingdom or for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, his consent for these purposes may be given only with the permission of the Attorney General: s 117(2A) (added by the Terrorism Act 2006 s 37(2); amended by the Counter-Terrorism Act 2008 s 29). As to the effect of these restrictions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1071.

8 Note that this is not one of the defences to be proved by the defendant to which the Terrorism Act 2000 s 118 (which states that in relation to certain provisions of the Act where the defendant has the burden of proof that burden is only an evidential one: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 442) applies: see s 118. It may therefore be inferred that the burden imposed on the defendant of proving the present defence is a legal (or persuasive) one, but that implication was not drawn in respect of the corresponding issue in the context of s 11 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 387): see *Sheldrake v DPP, A-G's Reference (No 4 of 2002)* [2004] UKHL 43, [2005] 1 AC 264, [2005] 1 Cr App Rep 450. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1368 et seq.

9 Terrorism Act 2000 Sch 6 para 1(4).

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493. Procedure and criteria for making financial information orders.

A financial information order¹ may be made in England and Wales only on the application of a police officer of at least the rank of superintendent² and only if the person making it is satisfied that:

- 1656 (1) the order is sought for the purposes of a terrorist investigation³;
- 1657 (2) the tracing of terrorist property⁴ is desirable for the purposes of the investigation⁵; and
- 1658 (3) the order will enhance the effectiveness of the investigation⁶.

1 le an order under the Terrorism Act 2000 Sch 6 para 1(1): see PARA 492.

2 Terrorism Act 2000 Sch 6 para 2(a). The order is made by a circuit judge or (as from a day to be appointed) a District Judge (Magistrates' Courts): see Sch 6 para 3 (prospectively amended by the Courts Act 2003 Sch 4 para 10). At the date at which this volume states the law no such day had been appointed. Criminal Procedure Rules may make provision about the procedure for an application for a financial information order: Terrorism Act 2000 Sch 6 para 4(1) (amended by Courts Act 2003 Sch 8 para 390).

3 Terrorism Act 2000 Sch 6 para 5(a). As to the meaning of 'terrorist investigation' see s 32; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 407.

4 As to the meaning of 'terrorist property' see the Terrorism Act 2000 s 14(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 393.

5 Terrorism Act 2000 Sch 6 para 5(b).

6 Terrorism Act 2000 Sch 6 para 5(c).

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494. Account monitoring orders.

An account monitoring order is an order that the financial institution¹ specified in the application for the order must:

- 1659 (1) for the period specified in the order²;
- 1660 (2) in the manner so specified³;
- 1661 (3) at or by the time or times so specified⁴; and
- 1662 (4) at the place or places so specified⁵,

provide information of the description specified in the application to an appropriate officer⁶.

An account monitoring order has effect as if it were an order of the Crown Court⁷. It has effect in spite of any restrictions on disclosure of information (however imposed)⁸.

1 As to the meaning of 'financial institution' see PARA 492 note 3 (definition applied by the Terrorism Act 2000 Sch 6A para 1(1), (5) (Sch 6A added by the Anti-terrorism, Crime and Security Act 2001 Sch 2 para 1)).

2 Terrorism Act 2000 Sch 6A para 2(4)(a) (as added: see note 1). The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made: Sch 6A para 2(5) (as so added).

3 Terrorism Act 2000 Sch 6A para 2(4)(b) (as added: see note 1).

4 Terrorism Act 2000 Sch 6A para 2(4)(c) (as added: see note 1).

5 Terrorism Act 2000 Sch 6A para 2(4)(d) (as added: see note 1).

6 Terrorism Act 2000 Sch 6A para 2(4) (as added: see note 1). In England and Wales, an 'appropriate officer' is a constable: Sch 6A para 1(4) (as so added). A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings (Sch 6A para 7(1) (as so added)), except:

785 (1) in the case of proceedings for contempt of court (Sch 6A para 7(2)(a) (as so added));

786 (2) in the case of proceedings under s 23 (see PARAS 482, 483) where the financial institution has been convicted of an offence under any of ss 15-18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 390-393) (Sch 6A para 7(2)(b) (as so added)); or

787 (3) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with it (Sch 6A para 7(2)(c) (as so added)).

A statement may not be used by virtue of head (3) above against a financial institution unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of the financial institution in the proceedings arising out of the prosecution: Sch 6A para 7(3) (as so added).

7 Terrorism Act 2000 Sch 6A paras 1(3), 6(1) (as added: see note 1).

8 Terrorism Act 2000 Sch 6A para 6(2) (as added: see note 1).

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495. Procedure and criteria for making, discharging and varying account monitoring orders.

A circuit judge¹ may make an account monitoring order² on an application by an appropriate officer³ if he is satisfied that:

- 1663 (1) the order is sought for the purposes of a terrorist investigation⁴;
- 1664 (2) the tracing of terrorist property⁵ is desirable for the purposes of the investigation⁶; and
- 1665 (3) the order will enhance the effectiveness of the investigation⁷.

An application for an account monitoring order may be made without notice to a judge in chambers⁸. The application must state that the order is sought against the financial institution⁹ specified in the application in relation to information which relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another), and is of the description so specified¹⁰.

The Crown Court has power to discharge or vary an account monitoring order¹¹. An application to discharge or vary an account monitoring order may be made to the Crown Court by the person who applied for it (or another police officer) or any person affected by it¹².

1 Or, as from a day to be appointed, a District Judge (Magistrates' Courts): see the Terrorism Act 2000 Sch 6A para 1(2) (Sch 6A added by the Anti-terrorism, Crime and Security Act 2001 Sch 2 para 1); and PARA 493 note 2.

2 As to account monitoring orders see PARA 494.

3 As to the meaning of 'appropriate officer' see PARA 494 note 6.

4 Terrorism Act 2000 Sch 6A para 2(1)(a) (as added: see note 1). As to the meaning of 'terrorist investigation' see s 32; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 407.

5 As to the meaning of 'terrorist property' see s 14(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 393.

6 Terrorism Act 2000 Sch 6A para 2(1)(b) (as added: see note 1).

7 Terrorism Act 2000 Sch 6A para 2(1)(c) (as added: see note 1). Where a circuit judge makes an account monitoring order under Sch 6A the court officer must give a copy of the order to the financial institution specified in the application for the order: CrimPR 62.1(1).

8 Terrorism Act 2000 Sch 6A para 3(1) (as added: see note 1). As from a day to be appointed this will extend to a District Judge (Magistrates' Court): see note 1. The description of information specified in an application for an account monitoring order may be varied by the person who made the application: Sch 6A para 3(2) (as so added). If the application was made by a police officer, the description of information specified in it may be varied by a different police officer: Sch 6A para 3(3) (as so added). Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders: Sch 6A para 5(1) (as so added).

9 As to the meaning of 'financial institution' see PARA 492 note 3.

10 Terrorism Act 2000 Sch 6A para 2(2) (as added: see note 1). The application may specify information relating to all accounts held by the person specified in the application for the order at the financial institution so specified, a particular description, or particular descriptions of accounts so held, or a particular account, or particular accounts, so held: Sch 6A para 2(3) (as so added).

11 Terrorism Act 2000 Sch 6A para 4(3) (as added: see note 1).

12 Terrorism Act 2000 Sch 6A para 4(1), (2) (as added: see note 1). Where any person other than the person who applied for the account monitoring order proposes to make an application under Sch 6A para 4(1), he must give a copy of the proposed application, not later than 48 hours before the application is to be made, to a police officer at the police station specified in the account monitoring order: CrimPR 62.1(2).

UPDATE

495 Procedure and criteria for making, discharging and varying account monitoring orders

NOTES 7, 12--CrimPR now Criminal Procedure Rules 2010, SI 2010/60 ('CrimPR'). As to investigation orders see CrimPR Pt 6.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(i) Anti-social behaviour Orders Made Otherwise than on Conviction/A. ORDERS OF THE COURT/496. Anti-social behaviour orders in civil proceedings.

(4) QUASI SENTENCES

(i) Anti-social behaviour Orders Made Otherwise than on Conviction

A. ORDERS OF THE COURT

496. Anti-social behaviour orders in civil proceedings.

An application¹ for an anti-social behaviour order² may be made by a relevant authority³ if it appears to the authority that the following conditions are fulfilled with respect to any person aged ten or over, namely:

- 1666 (1) that the person has acted, since 1 April 1999⁴, in an anti-social manner⁵;
and
- 1667 (2) that such an order is necessary to protect relevant persons⁶ from further anti-social acts by him⁷.

If, on such an application, it is proved⁸ that these conditions⁹ are fulfilled, the magistrates' court¹⁰ may make an anti-social behaviour order, which prohibits the defendant from doing anything described in the order¹¹.

An anti-social behaviour order has effect for a period (not less than two years) specified in the order or until further order¹². The applicant or the defendant may apply¹³ by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order¹⁴.

An appeal lies to the Crown Court against the making of an anti-social behaviour order¹⁵. The making of anti-social behaviour orders is restricted under the common law¹⁶. Provision is also made in connection with proceedings for the breaching of orders¹⁷, the review of orders¹⁸, and the making of individual support orders to supplement anti-social behaviour orders¹⁹.

1 Such an application must be made by complaint to a magistrates' court (Crime and Disorder Act 1998 s 1(3) (amended by SI 2005/886)) in the form set out in the Magistrates' Courts (Anti-social Behaviour Orders) Rules 2002, SI 2002/2784, Sch 1: r 4(1) (amended by SI 2003/1236). Proceedings under the Crime and Disorder Act 1998 s 1 are civil, not criminal, both as a matter of domestic law and for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (the presumption of innocence and right to a fair trial: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq): *R (on the application of McCann) v Crown Court at Manchester, Clingham v Kensington and Chelsea Royal London Borough Council* [2002] UKHL 39, [2003] 1 AC 787, [2003] 1 Cr App Rep 419. Where a local authority is considering applying for an anti-social behaviour order, it is not legally required to involve the defendant through consultation or hearings: *Wareham v Purbeck District Council* [2005] EWHC 358 (Admin), 169 JP 217.

2 Ie under the Crime and Disorder Act 1998 s 1(1): see the text and notes 3-7. As to proceedings for anti-social behaviour orders see CPR Pt 65.

3 As to the meaning of 'relevant authority' see PARA 307 note 7.

4 le the commencement date of the Crime and Disorder Act 1998 s 1: see the Crime and Disorder Act 1998 (Commencement No 3 and Appointed Day) Order 1998, SI 1998/3263. See also *R v McGrath (Jamie)* [2005] EWCA Crim 353, [2005] 2 Cr App Rep (S) 525; and PARA 304 note 3.

5 Crime and Disorder Act 1998 s 1(1)(a). 'Acting in an anti-social manner' is acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the person so acting: s 1(1)(a) (as so added). For the purpose of determining whether the condition mentioned in s 1(1)(a) is fulfilled, the court must disregard any act of the defendant which he shows was reasonable in the circumstances: Crime and Disorder Act 1998 s 1(5). As to whether the burden of proof is a legal (or persuasive) one or an evidential one, and, if the former, its compatibility with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(2), see *R (on the application of McCann) v Crown Court at Manchester, Clingham v Kensington and Chelsea Royal London Borough Council* [2002] UKHL 39, [2003] 1 AC 787, [2003] 1 Cr App Rep 419; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1368 et seq.

There is no requirement for proof of intent to cause harassment, alarm or distress, or, where the conduct of a number of persons is involved, that a sole defendant is acting in concert with them. Nor, where harassment, alarm or distress is caused by the conduct of a number of people, including the defendant, does it require proof that the defendant's conduct on its own should have been of a sufficiently aggravated nature to cause harassment, alarm or distress, or, if not, that he should have in some way shared responsibility with the others for their aggravated conduct. The Crime and Disorder Act 1998 s 1(1)(a) is concerned simply with a defendant's conduct and its effect on the victim's mind, whether looked at on its own or with the conduct of others: *Chief Constable of Lancashire v Potter* [2003] EWHC 2272 (Admin), [2003] 42 LS Gaz R 31. A person cannot behave in an anti-social manner in the absence of a potential victim: see *R (on the application of Gosport Borough Council) v Fareham Magistrates' Court* [2006] EWHC 3047 (Admin), [2007] 1 WLR 634.

Nothing in the Crime and Disorder Act 1998 s 1 affects the operation of the Magistrates' Courts Act 1980 s 127(1) (time limit of six months within which to lay an information or make a complaint from time of offence or matter complained of: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589): Crime and Disorder Act 1998 s 1(5A) (added by the Violent Crime Reduction Act 2006 s 59(1)). See further the Crime and Disorder Act 1998 s 11 (special measures for witnesses); and PARA 304 note 4.

If a constable in uniform has reason to believe that a person has been acting, or is acting, in an anti-social manner within the meaning of the Crime and Disorder Act 1998 s 1, he may require that person to give him his name and address: Police Reform Act 2002 s 50(1). Any person who fails to give his name and address when required to do so, or gives a false or inaccurate name or address in response to such a requirement, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 50(2). As to the standard scale see PARA 142. A constable's powers under s 50 may also be exercised by a suitably designated community support officer (see Sch 4 paras 3, 4; and **POLICE** vol 36(1) (2007 Reissue) PARAS 529, 531), or by persons accredited for the purposes of a community safety accreditation scheme (see Sch 5 para 3; and **POLICE** vol 36(1) (2007 Reissue) PARA 533).

6 As to the meaning of 'relevant persons' see PARA 306 note 6.

7 Crime and Disorder Act 1998 s 1(1)(b) (substituted by the Police Reform Act 2002 s 61(1), (2)). No order should be made under the Crime and Disorder Act 1998 s 1 without notice to the other party unless there is very good reason for departing from this rule; persistent and serious anti-social behaviour on the part of the defendant is required before it can be necessary to make such an order: *Moat Housing Group South Ltd v Harris* [2005] EWCA Civ 287, [2006] QB 606, [2005] 4 All ER 1051.

Before making an application for an anti-social behaviour order or an application for an order under the Crime and Disorder Act 1998 s 1B (orders in county court proceedings: see PARA 497), the council for a local government area must consult the chief officer of police of the police force maintained for the police area within which that local government area lies: s 1E(1), (2) (s 1E added by the Police Reform Act 2002 s 66). Before making such an application, a chief officer of police must consult the council for the local government area (see PARA 307 note 7) in which the person in relation to whom the application is to be made resides or appears to reside: Crime and Disorder Act 1998 s 1E(3) (as so added). Before making such an application, a relevant authority other than a council for a local government area or a chief officer of police must consult the council for the local government area in which the person in relation to whom the application is to be made resides or appears to reside (unless the relevant authority is a county council for a county in which there are no districts) and the chief officer of police of the police force maintained for the police area within which that local government area lies: s 1E(4), (5) (as so added; s 1E(5) added by the Anti-social Behaviour Act 2003 s 85(1), (7)).

8 le beyond reasonable doubt: *R (on the application of McCann) v Crown Court at Manchester, Clingham v Kensington and Chelsea Royal London Borough Council* [2002] UKHL 39, [2003] 1 AC 787, [2003] 1 Cr App Rep 419.

9 le the conditions mentioned in the Crime and Disorder Act 1998 s 1(1): see heads (1), (2) in the text.

10 Where an application is made to a magistrates' court for an anti-social behaviour order or for the variation or discharge of such an order, and the person against whom the order is sought is under 18, the magistrates constituting the court should normally be qualified to sit in the youth court; however, applications for interim orders (see PARA 498), including those made without notice, can be listed before magistrates who are not so qualified: *Practice Direction (Magistrates' Courts: Anti-social Behaviour Orders: Composition of Benches)* [2006] 1 All ER 886, [2006] 1 WLR 636. Moreover, if it is not practicable so to constitute the bench, particularly when to do so would result in a delayed hearing, this practice direction does not apply: see *Practice Direction (Magistrates' Courts: Anti-social Behaviour Orders: Composition of Benches)*.

11 Crime and Disorder Act 1998 s 1(4). The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting persons (whether relevant persons or persons elsewhere in England and Wales) from further anti-social acts by the defendant: s 1(6) (substituted by the Police Reform Act 2002 s 61(1), (7)).

A person subject to an anti-social behaviour order is entitled to know what he can and cannot do; the prohibitions ordered must be sufficiently specific and clear to enable the defendant to comply without difficulty; an order prohibiting the defendant from committing any criminal offence is too wide and therefore invalid; a prohibition against committing a specific offence may be valid: *R (on the application of W) v DPP* [2005] EWCA Civ 1333, 169 JP 435, sub nom *W v DPP* (2005) Times, 20 June. See also *DPP v T* [2006] EWHC 728 (Admin), [2006] 3 All ER 471 sub nom *Crown Prosecution Service v T* (2006) Times, 13 April, DC. The inclusion of a curfew order in an anti-social behaviour order is not legally objectionable because it is substantially prohibitory as required by the Crime and Disorder Act 1998 s 1 and not just formally so; there is nothing legally objectionable in making such a prohibition if it is necessary for protection because its purpose is preventive and protective, and not to punish: *R (on the application of Lonergan) v Lewes Crown Court* [2005] EWHC 457 (Admin), [2005] 2 All ER 362, [2005] 1 WLR 2570. See also the cases cited in PARA 304 note 8.

Publicity is necessary in order for an anti-social behaviour order to operate, and that publicity is unlikely to be effective unless it includes photographs, names and at least partial addresses: *R (on the application of Stanley) v Metropolitan Police Comr* [2004] EWHC 2229 (Admin), 168 JP 623, [2005] Crim LR 292.

12 Crime and Disorder Act 1998 s 1(7).

13 As to the procedure on application for the discharge or variation of an order see the Magistrates' Courts' (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 6 (amended by SI 2005/617). As to service see also the Magistrates' Courts' (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 7 (amended by SI 2005/617).

14 Crime and Disorder Act 1998 s 1(8). Except with the consent of both parties, no anti-social behaviour order may be discharged before the end of the period of two years beginning with the date of service of the order: s 1(9).

15 Crime and Disorder Act 1998 s 4(1) (amended by the Police Reform Act 2002 s 65(2)). On such an appeal the Crown Court may make such order as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just: Crime and Disorder Act 1998 s 4(2). Any order of the Crown Court made on an appeal under s 4 (other than one directing that an application be re-heard by a magistrates' court) is to be treated, for the purposes of s 1(8) (see the text and notes 13-14), as if it were an order of the magistrates' court from which the appeal was brought and not an order of the Crown Court: s 4(3).

16 See PARA 305.

17 See the Crime and Disorder Act 1998 s 1(10), (10A)-(10E), (11); and PARA 311.

18 See the Crime and Disorder Act 1998 ss 1J, 1K; and PARA 308.

19 See the Crime and Disorder Act 1998 ss 1AA, 1AB; and PARAS 309, 310.

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497. Orders in county court proceedings.

If, in any proceedings in a county court (the 'principal proceedings'), a relevant authority¹ considers that a party to those proceedings is a person in relation to whom it would be reasonable for it to make an application² for an anti-social behaviour order³, the authority may either:

- 1668 (1) if it is a party to the principal proceedings, make an application in those proceedings for an order prohibiting anti-social behaviour⁴; or
- 1669 (2) if it is not a party to those proceedings, make an application to be joined to those proceedings to enable it to apply for an order prohibiting anti-social behaviour⁵ and, if it is so joined, apply for such an order⁶.

Also, where a relevant authority considers that a person who is not a party to the proceedings has acted in an anti-social manner⁷ and that the person's anti-social acts are material in relation to the principal proceedings⁸, the relevant authority may, if it is a party to the principal proceedings, make an application for the person⁹ to be joined to the principal proceedings to enable an order¹⁰ to be made in relation to that person¹¹ and, if that person is so joined, apply for such an order¹².

If, on an application for such an order, it is proved that the conditions for making an anti-social behaviour order otherwise than on conviction¹³ are fulfilled as respects that other party, the court may make an order which prohibits him from doing anything described in the order¹⁴. The person against whom an order under this provision has been made, and the relevant authority on whose application that order was made, may apply to the county court which made the order for it to be varied or discharged by a further order¹⁵. Provision is also made in connection with the review of orders¹⁶ and the making of individual support orders to supplement orders made under these provisions¹⁷.

1 As to the meaning of 'relevant authority' see PARA 307 note 7.

2 Ie an application under the Crime and Disorder Act 1998 s 1: see PARA 496.

3 Crime and Disorder Act 1998 s 1B(1), (2)(b), (3)(b) (s 1B added by the Police Reform Act 2002 s 63).

4 Crime and Disorder Act 1998 s 1B(2)(a) (as added: see note 3). An application for such an order in county court proceedings is made under the Crime and Disorder Act 1998 s 1B(4): see the text and notes 13-14. As to the duty to consult prior to making an application see s 1E; and PARA 496 note 7.

5 Ie an order under the Crime and Disorder Act 1998 s 1B(4): see the text and notes 13-14.

6 Crime and Disorder Act 1998 s 1B(3)(a) (as added: see note 3).

7 Crime and Disorder Act 1998 s 1B(3A)(a) (s 1B as added (see note 3); s 1B(3A)-(3C) added by the Anti-social Behaviour Act 2003 s 85)). As to 'acting in an anti-social manner' see PARA 496 note 5.

The provisions of s 1B(3A)-(3C) were in force in so far as they relate to persons aged 18 or over on 31 March 2004: Anti-social Behaviour Act 2003 (Commencement No 2) Order 2004, SI 2004/690. From 1 October 2004 the provisions of the Crime and Disorder Act 1998 s 1B(3A)-(3C) were brought into force in relation to persons under the age 18 in relation to applications for anti-social behaviour orders in county court proceedings made at the following county courts: Bristol; Central London; Clerkenwell; Dewsbury; Huddersfield; Leicester;

Manchester; Oxford; Tameside; Wigan; and Wrexham: Anti-social Behaviour Act 2003 (Commencement No 4) Order 2004, SI 2004/2168, art 4 (amended by SI 2006/835).

8 Crime and Disorder Act 1998 s 1B(3A)(b) (as added: see notes 3, 7).

9 Ie the person mentioned in the Crime and Disorder Act 1998 s 1B(3A)(a) (see the text and note 7).

10 See note 5.

11 Crime and Disorder Act 1998 s 1B(3B)(a) (as added: see notes 3, 7).

12 Crime and Disorder Act 1998 s 1B(3B)(b) (as added: see notes 3, 7). A person may not be joined to proceedings in pursuance of s 1B(3B) unless his anti-social acts are material in relation to the principal proceedings: s 1B(3C) (as so added).

13 Ie the conditions mentioned in the Crime and Disorder Act 1998 s 1(1): see PARA 496.

14 Crime and Disorder Act 1998 s 1B(4) (as added: see note 3). The provisions of s 1(5)-(7), (10)-(12) (see PARAS 311, 496) apply for the purposes of the making and effect of orders made under s 1B as they apply for the purposes of the making and effect of anti-social behaviour orders: s 1B(7) (as so added). As to the power of the court to make an interim order see s 1D; and PARA 498. As to the procedure in relation to applications see *Practice Direction--Anti-Social Behaviour*, appended to the Civil Procedure Rules 1998, SI 1998/3132.

15 Crime and Disorder Act 1998 s 1B(5) (s 1B as added (see note 3); s 1B(5) amended by the Anti-social Behaviour Act 2003 s 85(1), (6)). Except with the consent of the relevant authority and the person subject to the order, no such order may be discharged before the end of the period of two years beginning with the date of service of the order: Crime and Disorder Act 1998 s 1B(6) (as so added).

16 See the Crime and Disorder Act 1998 ss 1J, 1K; and PARA 308.

17 See the Crime and Disorder Act 1998 ss 1AA, 1AB; and PARAS 309, 310 (applied with modifications by s 1B(8), (9) (as added (see note 3); further added by the Criminal Justice and Immigration Act 2008 s 124(6))).

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498. Interim orders.

If an application is made for an anti-social behaviour order¹ or for an order in county court proceedings² and, before determining the application, the court considers that it is just to make an interim order³ pending the determination of the application, it may make such an order⁴. An interim order is an order which prohibits the defendant from doing anything described in the order⁵. The prohibitions that may be imposed by an interim order are those necessary for the purpose of protecting persons⁶ from further anti-social acts by the defendant⁷, and such an order:

- 1670 (1) must be for a fixed period⁸;
- 1671 (2) may be varied, renewed or discharged⁹; and
- 1672 (3) must, if it has not previously ceased to have effect, cease to have effect on the determination of the application¹⁰.

The applicant or the defendant may apply¹¹ by complaint to the court which made an interim order for it to be varied or discharged by a further order¹². An appeal lies to the Crown Court against the making of an interim order¹³.

1 See PARA 496.

2 Crime and Disorder Act 1998 s 1D(1)(a), (b) (s 1D added by the Police Reform Act 2002 s 65(1); Crime and Disorder Act 1998 s 1D(1), (2) substituted by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (6)). As to an application for an order in county court proceedings see the Crime and Disorder Act 1998 s 1B; and PARA 497.

3 Ie an order under the Crime and Disorder Act 1998 s 1D (see the text and notes 4-12). As to the justice of making an interim order see PARA 306 note 3.

4 Crime and Disorder Act 1998 s 1D(2) (as added and substituted: see note 2). As to special measures for witnesses see s 1I; and PARA 304 note 4. As to proceedings for the breach of interim orders see PARA 311. As to applications for interim orders see PARA 306 note 4.

5 Crime and Disorder Act 1998 s 1D(3) (as added: see note 2). The omission of a condition in an interim order from the final order is not, of itself, a matter to which a court should properly have regard when sentencing for breach of a condition in an interim order: *Parker v DPP* [2005] EWHC 1485 (Admin), (2005) Times, 20 June.

6 Ie relevant persons or persons elsewhere in England and Wales: Crime and Disorder Act 1998 ss 1(6), 1D(5) (s 1(6) substituted by the Police Reform Act 2002 s 61(1), (7); Crime and Disorder Act 1998 s 1D(5) as added (see note 2); amended by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (9)). As to the meaning of 'relevant persons' for this purpose see PARA 306 note 6.

7 Crime and Disorder Act 1998 s 1(6) (as substituted: see note 6).

8 Crime and Disorder Act 1998 s 1D(4)(a) (as added: see note 2). An interim order ceases to have effect if the application for the anti-social behaviour order is withdrawn: Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5(6).

9 Crime and Disorder Act 1998 s 1D(4)(b) (as added: see note 2). If an interim order is made without notice being given to the defendant, and the defendant subsequently applies to the court for the order to be discharged or varied, his application may not be dismissed without the opportunity for him to make oral

representations to the court: Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 5(8). As to an application for variation or discharge see also r 6 (amended by SI 2005/617).

10 Crime and Disorder Act 1998 s 1D(4)(c) (as added (see note 2); and amended by the Serious Organised Crime and Police Act 2005 s 139(1), (5), (7)).

11 As to the procedure on application for the discharge or variation of an order see the Magistrates' Courts' (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 6 (amended by SI 2005/617). As to service see also the Magistrates' Courts' (Anti-Social Behaviour Orders) Rules 2002, SI 2002/2784, r 7 (amended by SI 2005/617).

12 Crime and Disorder Act 1998 s 1(8). Except with the consent of both parties, no interim order may be discharged before the end of the period of two years beginning with the date of service of the order: s 1(9).

13 Crime and Disorder Act 1998 s 4(1) (amended by the Police Reform Act 2002 s 65(2)). On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal (Crime and Disorder Act 1998 s 4(2)(a)) and may also make such incidental or consequential orders as appear to it to be just (s 4(2)(b)).

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B. INTERVENTION ORDERS

499. Intervention orders.

An intervention order is an order which:

- 1673 (1) requires the defendant to comply, for a period not exceeding six months, with such requirements as are specified in the order¹; and
- 1674 (2) requires the defendant to comply with any directions given by a person authorised to do so under the order with a view to the implementation of such requirements².

An intervention order or directions given under the order may require the defendant:

- 1675 (a) to participate in the activities specified in the requirement or directions at a time or times so specified³;
- 1676 (b) to present himself to a person or persons so specified at a time or times so specified⁴.

Requirements included in, or directions given under, an intervention order must, as far as practicable, be such as to avoid any conflict with the defendant's religious beliefs, and any interference with the times (if any) at which he normally works or attends an educational establishment⁵.

1 Crime and Disorder Act 1998 s 1G(5)(a) (ss 1G, 1H added by the Drugs Act 2005 s 20(1)). As to applications for intervention orders by relevant authorities see PARA 500. As to the making of intervention orders by the court see PARA 501. As to compliance, variation and discharge see PARA 502.

2 Crime and Disorder Act 1998 s 1G(5)(b) (as added: see note 1).

3 Crime and Disorder Act 1998 s 1G(6)(a) (as added: see note 1).

4 Crime and Disorder Act 1998 s 1G(6)(b) (as added: see note 1).

5 Crime and Disorder Act 1998 s 1G(7) (as added: see note 1).

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500. Application for intervention orders by relevant authority.

If, in relation to a person who has attained the age of 18, a relevant authority¹:

- 1677 (1) makes an application for an anti-social behaviour order² or for an order in county court proceedings³ (the 'behaviour order')⁴;
- 1678 (2) has obtained from an appropriately qualified person⁵ a report relating to the effect on the person's behaviour of the misuse of controlled drugs⁶ or of such other factors as the Secretary of State by order prescribes⁷; and
- 1679 (3) has engaged in consultation with such persons as the Secretary of State by order prescribes for the purpose of ascertaining that, if the report recommends that an intervention order⁸ is made, appropriate activities⁹ will be available¹⁰,

the relevant authority may make an application to the court which is considering the application for the behaviour order for an intervention order¹¹.

1 'Relevant authority' means a relevant authority for the purposes of the Crime and Disorder Act 1998 s 1 (see PARA 307 note 7): s 1G(10) (ss 1G, 1H added by the Drugs Act 2005 s 20(1)).

2 See PARA 496.

3 As to an application for an order in county court proceedings see the Crime and Disorder Act 1998 s 1B; and PARA 497.

4 Crime and Disorder Act 1998 s 1G(1)(a) (as added: see note 1). Sections 1G, 1H apply to a person in respect of whom a behaviour order has been made subject to modifications: see s 1G(12)(a)-(c) (as so added).

5 'Appropriately qualified person' means a person who has such qualifications or experience as the Secretary of State by order prescribes: Crime and Disorder Act 1998 s 1G(10) (as added: see note 1). The Crime and Disorder Act 1998 (Intervention Orders) Order 2006, SI 2006/2138, provides that an 'appropriately qualified person' is a fully registered medical practitioner, within the meaning given by the Medical Act 1983 s 55(1) (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 3, 4), employed by a trust referred to in the Crime and Disorder Act 1998 (Intervention Orders) Order 2006, SI 2006/2138, art 2 (see note 10) as a specialist in the treatment of substance misuse or addiction, including drug misuse or addiction: art 4.

6 As to the meaning of 'controlled drug' see the Misuse of Drugs Act 1971 s 2, Sch 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770 (definition applied by the Crime and Disorder Act 1998 s 1G(10) (as added: see note 1)).

7 Crime and Disorder Act 1998 s 1G(1)(b) (as added: see note 1). An order under s 1G made by the Secretary of State may make different provision for different purposes: s 1G(11) (as so added).

8 Ie an order under the Crime and Disorder Act 1998 s 1G.

9 'Appropriate activities' means such activities, or activities of such a description, as are prescribed by order made by the Secretary of State for the purposes of the Crime and Disorder Act 1998 s 1G: s 1G(10) (as added: see note 1). The Crime and Disorder Act 1998 (Intervention Orders) Order 2006, SI 2006/2138, provides that 'appropriate activities' are such activities as are involved in the provision of the drug misuse treatment services under the 'Models of care for treatment of adult drug users' as, for the time being, approved by the Secretary of State and published by the National Treatment Agency: Crime and Disorder Act 1998 (Intervention Orders) Order 2006, SI 2006/2138, art 4.

10 Crime and Disorder Act 1998 s 1G(1)(c) (as added: see note 1). The Crime and Disorder Act 1998 (Intervention Orders) Order 2006, SI 2006/2138, art 2(1) provides that the persons with whom the relevant authority is to consult prior to applying for an intervention order are:

- 788 (1) a National Health Service trust;
- 789 (2) a primary care trust;
- 790 (3) a National Health Service foundation trust; and
- 791 (4) a local authority, where it is not the relevant authority,

concerned with the provision of appropriate activities within the area in which it appears that the defendant resides or will reside. The reference in head (4) to a local authority is a reference, in England, to the council of a county, district or London borough, the City of London, the Isle of Wight and the Isles of Scilly and, in Wales, to the council of a county or county borough: art 2(2).

11 Crime and Disorder Act 1998 s 1G(2) (as added: see note 1). As to the meaning of 'intervention order' see PARA 499. As to compliance, variation and discharge see PARA 502. Before making an intervention order the court must explain to the defendant in ordinary language:

- 792 (1) the effect of the order and of the requirements proposed to be included in it (s 1H(1)(a) (as so added));
- 793 (2) the consequences which may follow under s 1H(3) (see PARA 502) if he fails to comply with any of those requirements (s 1H(1)(b) (as so added)); and
- 794 (3) that the court has power under s 1H(5) (see PARA 502) to review the order on the application either of the defendant or of the relevant authority (s 1H(1)(c) (as so added)).

The power of the Secretary of State under the Criminal Justice Act 2003 s 174(4) (see PARA 23) includes power by order to prescribe cases in which the Crime and Disorder Act 1998 s 1H(1) does not apply, and prescribe cases in which the explanation referred to in s 1H(1) may be made in the absence of the defendant, or may be provided in written form: s 1H(2) (as so added).

UPDATE

500 Application for intervention orders by relevant authority

NOTE 9--Now, 'appropriate activities' means such activities as are involved in the provision of the drug misuse treatment services under the 'Models of care for treatment of adult drug misusers: Update 2006' published by the National Treatment Agency for Substance Misuse in July 2006: SI 2006/2138, art 4 (amended by SI 2010/1067).

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501. Making of intervention orders by the court.

The court may make an intervention order¹ if it makes a behaviour order² and is satisfied:

1680 (1) that an intervention order is desirable in the interests of preventing a repetition of the behaviour which led to the behaviour order being made ('trigger behaviour')³;

1681 (2) that appropriate activities⁴ relating to the trigger behaviour or its cause are available for the defendant⁵;

1682 (3) that the defendant is not (at the time the intervention order is made) subject to another intervention order or to any other treatment relating to the trigger behaviour or its cause (whether on a voluntary basis or by virtue of a requirement imposed in pursuance of any enactment)⁶; and

1683 (4) that the court has been notified by the Secretary of State that arrangements for implementing intervention orders are available in the area in which it appears that the defendant resides or will reside and the notice has not been withdrawn⁷.

1 As to the meaning of 'intervention order' see PARA 499. As to the matters which the court must explain to the defendant in ordinary language before making an intervention order see PARA 500 note 11. As to compliance, variation and discharge see PARA 502.

2 Crime and Disorder Act 1998 s 1G(3)(a) (ss 1G, 1H added by the Drugs Act 2005 s 20(1)). As to the meaning of 'behaviour order' see PARA 500.

3 Crime and Disorder Act 1998 s 1G(3)(b), (4)(a) (as added: see note 2).

4 As to the meaning of 'appropriate activities' see PARA 500 note 9.

5 Crime and Disorder Act 1998 s 1G(4)(b) (as added: see note 2).

6 Crime and Disorder Act 1998 s 1G(4)(c) (as added: see note 2).

7 Crime and Disorder Act 1998 s 1G(4)(d) (as added: see note 2).

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502. Compliance, variation and discharge.

If a person in respect of whom an intervention order¹ is made fails without reasonable excuse to comply with any requirement included in the order he is guilty of an offence². If the defendant fails to comply with a requirement included in or a direction given under an intervention order, the person responsible for the provision or supervision of appropriate activities³ under the order must inform the relevant authority of that fact⁴.

On an application made to a magistrates' court by complaint by a person subject to an intervention order, or by the relevant authority⁵, the court which made the intervention order may vary or discharge it by a further order⁶.

If the behaviour order⁷ as a result of which an intervention order is made ceases to have effect, the intervention order (if it has not previously ceased to have effect) ceases to have effect when the behaviour order does⁸.

1 As to the meaning of 'intervention order' see PARA 499. As to applications for intervention orders by relevant authorities see PARA 500. As to the making of intervention orders by the court see PARA 501.

2 Crime and Disorder Act 1998 s 1H(3) (ss 1G, 1H added by the Drugs Act 2005 s 20(1)). A person guilty of this offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Crime and Disorder Act 1998 s 1H(3) (as so added). As to the standard scale see PARA 142.

3 As to the meaning of 'appropriate activities' see PARA 500 note 9. The person responsible for the provision or supervision of appropriate activities is a person of such description as is prescribed by order made by the Secretary of State: s 1G(9) (as added: see note 2). The description of person that has been prescribed is a trust or authority referred to in the Crime and Disorder Act 1998 (Intervention Orders) Order 2006, SI 2006/2138, art 2 (see PARA 500 note 10) which provides or supervises, or arranges for the provision or supervision of, the appropriate activities under the intervention order, as the case may be: art 3.

4 Crime and Disorder Act 1998 s 1G(8) (as added: see note 2).

5 As to the meaning of 'relevant authority' see PARA 500 note 1.

6 Crime and Disorder Act 1998 s 1H(5) (as added: see note 2). An application under s 1H(5) made to a magistrates' court must be made by complaint: s 1H(6) (as so added). If the behaviour order as a result of which an intervention order was made is varied, the court varying the behaviour order may by a further order vary or discharge the intervention order: s 1H(7) (as so added).

7 As to the meaning of 'behaviour order' see PARA 500.

8 Crime and Disorder Act 1998 s 1H(4) (as added: see note 2).

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C. DIRECTIONS GIVEN BY CONSTABLES

503. Anti-social behaviour in public place.

Where a relevant officer¹ has reasonable grounds for believing that any members of the public have been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons² in public places³ in any locality in his police area (the 'relevant locality')⁴, and that anti-social behaviour⁵ is a significant and persistent problem in the relevant locality⁶, he may give an authorisation that constables' powers of dispersal⁷ are to be exercisable for a period specified in the authorisation which does not exceed six months⁸.

1 'Relevant officer' means a police officer of or above the rank of superintendent: Anti-social Behaviour Act 2003 s 36.

2 Any reference to the presence or behaviour of a group of persons is to be read as including a reference to the presence or behaviour of any one or more of the persons in the group: Anti-social Behaviour Act 2003 s 30(7).

3 'Public place' means any highway, and any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission: Anti-social Behaviour Act 2003 s 36.

4 Anti-social Behaviour Act 2003 s 30(1)(a).

5 'Anti-social behaviour' means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as the person: see Anti-social Behaviour Act 2003 s 36. Cf the similar definition of 'acting in an anti-social manner' (see PARA 496 note 5).

6 Anti-social Behaviour Act 2003 s 30(1)(b).

7 I.e. the powers conferred by the Anti-social Behaviour Act 2003 s 30(3)-(6): see PARA 504. Powers to make authorisations under these provisions also apply to British Transport Police officers: see s 35.

8 Anti-social Behaviour Act 2003 s 30(2). An authorisation under these provisions must be in writing, must be signed by the relevant officer giving it and must specify the relevant locality, the grounds on which the authorisation is given and the period during which the powers conferred by s 30(3)-(6) are exercisable: s 31(1). An authorisation may not be given without the consent of the local authority or each local authority whose area includes the whole or part of the relevant locality: s 31(2). Publicity must be given to an authorisation by either or both of the following methods: (1) publishing an authorisation notice (ie a notice which states the authorisation has been given, specifies the relevant locality and specifies the period during which the powers conferred by s 30(3)-(6) are exercisable) in a newspaper circulating in the relevant locality (s 31(3)(a), (4)); and (2) posting an authorisation notice in some conspicuous place or places within the relevant locality (s 31(3)(b)). Section 31(3) must be complied with before the beginning of the period during which the powers conferred by s 30(3)-(6) are exercisable: s 31(5). An authorisation may be withdrawn by the relevant officer who gave it, or any other relevant officer whose police area includes the relevant locality and whose rank is the same as or higher than that of the relevant officer who gave the authorisation: s 31(6). Before the withdrawal of an authorisation, consultation must take place with any local authority whose area includes the whole or part of the relevant locality: s 31(7). The withdrawal of an authorisation does not affect the exercise of any power pursuant to that authorisation which occurred prior to its withdrawal: s 31(8). The giving or withdrawal of an authorisation does not prevent the giving of a further authorisation in respect of a locality which includes the whole or any part of the relevant locality to which the earlier authorisation relates: s 31(9). The authorising officer must specify the grounds for his belief that the relevant anti-social behaviour has occurred in the authorisation itself: see *Sierny v DPP* [2006] EWHC 716 (Admin), 170 JP 697, DC.

For these purposes 'local authority' means: (a) in relation to England, a district council, a county council for an area for which there are no district councils, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; (b) in relation to Wales, a county council or a county borough council: s 36. As to the districts and counties in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq. In giving or withdrawing an authorisation, a relevant officer must have regard to any code of practice for the time being in force under s 34 (see PARA 505): s 34(4).

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504. Constables' powers of dispersal.

If a constable in uniform¹ has reasonable grounds for believing that the presence or behaviour of a group of two or more persons² in any public place³ in the relevant locality⁴ has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed⁵, he may give one or more of:

- 1684 (1) a direction requiring the persons in the group to disperse, either immediately or by such time as he may specify and in such way as he may specify⁶;
- 1685 (2) a direction requiring any of those persons whose place of residence is not within the relevant locality to leave the relevant locality or any part of the relevant locality, either immediately or by such time as he may specify and in such way as he may specify⁷; and
- 1686 (3) a direction prohibiting any of those persons whose place of residence is not within the relevant locality from returning to the relevant locality or any part of the relevant locality for such period, not exceeding 24 hours, from the giving of the direction as he may specify⁸.

A person who knowingly contravenes such a direction commits an offence⁹.

A constable in uniform also has power, if he finds a person in any public place in the relevant locality between the hours of 9 pm and 6 am who he has reasonable grounds for believing is under the age of 16, and is not under the effective control of a parent or a responsible person aged 18 or over, to remove the person to the person's place of residence unless he has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm¹⁰.

1 The powers conferred on a constable in uniform under these provisions are also exercisable by a community support officer so designated: Police Reform Act 2002 Sch 4 para 4A (added by the Anti-social Behaviour Act 2003 s 33(1), (3)). In exercising the powers conferred by the Anti-social Behaviour Act 2003 s 30(3)-(6) (see the text and notes 2-10), a constable in uniform or community support officer must have regard to any code of practice for the time being in force under s 34 (see PARA 505): s 34(5).

2 As to the presence or behaviour of a group of persons see PARA 503 note 2. A direction under the Anti-social Behaviour Act 2003 s 30(4) (see the text and notes 3-6) may not be given in respect of a group of persons who are engaged in conduct which is lawful under the Trade Union and Labour Relations (Consolidation) Act 1992 s 220 (right peacefully to picket a work place: see **EMPLOYMENT** vol 41 (2009) PARA 1349), or who are taking part in a public procession of the kind mentioned in the Public Order Act 1986 s 11(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 578) in respect of which written notice has been given in accordance with s 11, or in respect of which notice is not required to be given as provided by s 11(1), (2): Anti-social Behaviour Act 2003 s 30(5). See also *Bucknell v DPP* [2006] All ER (D) 103 (Jul).

As to the application of the dispersal provisions to protests and protesters see *R (on the application of Singh) v Chief Constable of West Midlands Police* [2005] EWHC 2840 (Admin), [2006] Crim LR 442, DC (affd [2006] EWCA Civ 1118, [2007] All ER 297, [2007] Crim LR 243): the fact that an authorisation has been made for one purpose (eg dealing with seasonal travellers) does not prevent a direction being made under the authorisation for the purpose of dealing with another type of disorder (eg that caused by protesters) (*R (on the application of Singh) v Chief Constable of West Midlands Police*).

3 As to the meaning of 'public place' see PARA 503 note 3.

4 As to the meaning of the 'relevant locality' see PARA 503.

5 Anti-social Behaviour Act 2003 s 30(3).

6 Anti-social Behaviour Act 2003 s 30(4)(a). A direction under s 30(4) may be given orally, may be given to any person individually or to two or more persons together; and may be withdrawn or varied by the person who gave it: s 32(1).

7 Anti-social Behaviour Act 2003 s 30(4)(b). See note 6.

8 Anti-social Behaviour Act 2003 s 30(4)(c). See note 6.

9 Anti-social Behaviour Act 2003 s 32(2). A person guilty of this offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding three months or to both: s 32(2). As to the standard scale see PARA 142.

10 Anti-social Behaviour Act 2003 s 30(6). Section 30(6) confers a power to use reasonable force to remove a person to his place of residence if necessary; the power is permissive, not coercive: see *R (on the application of W) v Metropolitan Police Comr* [2006] EWCA Civ 458, [2007] QB 399, [2006] 3 All ER 458. Where the power under the Anti-social Behaviour Act 2003 s 30(6) is exercised, any local authority whose area includes the whole or part of the relevant locality must be notified of that fact: s 32(4).

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505. Code of practice.

The Secretary of State may issue a code of practice about the giving or withdrawal of authorisations¹ and the exercise of constables' powers² of dispersal³. The Secretary of State may from time to time revise the whole or any part of such a code of practice, and must lay any code of practice issued by him, and any revisions of such a code, before Parliament⁴. A code of practice may make different provision for different cases⁵.

1 le under the Anti-social Behaviour Act 2003 s 30: see PARA 503.

2 le the powers conferred by the Anti-social Behaviour Act 2003 s 30(3)-(6): see PARA 504.

3 Anti-social Behaviour Act 2003 s 34(1).

4 Anti-social Behaviour Act 2003 s 34(2), (3).

5 Anti-social Behaviour Act 2003 s 34(6).

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(ii) Control Orders

A. CONTROL ORDERS GENERALLY

506. Power to make control orders.

A 'control order' is an order made against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism¹. The power to make a control order against an individual is exercisable:

- 1687 (1) except in the case of an order imposing obligations that are incompatible with the individual's right to liberty under the European Convention on Human Rights, by the Secretary of State²; and
- 1688 (2) in the case of an order imposing obligations that are or include derogating obligations³, by the court⁴ on an application by the Secretary of State⁵.

1 Prevention of Terrorism Act 2005 s 1(1). As to the meaning of 'terrorism' see the Terrorism Act 2000 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383 (definition applied by the Prevention of Terrorism Act 2005 s 15(1)). As to proceedings in connection with control orders see CPR Pt 76. The controlled person (ie the individual to whom the control order relates: s 15(1)) is bound by a control order only if a notice setting out the terms of the order has been delivered to him in person (s 7(8)(a)), and for the purpose of delivering such a notice to the controlled person a constable or a person authorised for the purpose by the Secretary of State may (if necessary by force) enter any premises (which includes any vehicle, vessel, aircraft or hovercraft) where he has reasonable grounds for believing that person to be and search those premises for him (s 7(9)). A person is guilty of an offence if he intentionally obstructs the exercise by any person of a power under s 7(9): s 9(3). A person guilty of an offence under s 9(3) is liable on summary conviction in England and Wales, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: s 9(7)(a), (8). In relation to an offence committed after the commencement of the Criminal Justice Act 2003 s 281(5) (not yet in force), the reference to six months is to be read as a reference to 51 weeks: see the Prevention of Terrorism Act 2005 s 9(7)(a), (8). As to the standard scale see PARA 142.

The Secretary of State has power, by order made by statutory instrument, to repeal ss 1-9, to revive those provisions at any time for a period not exceeding one year, or to provide that those provisions are not to expire at the time when they would otherwise expire under s 13(1) or in accordance with an order under s 13(2) but are to continue in force after that time for a period not exceeding one year: s 13(2). Before making such an order the Secretary of State must consult specified persons: see s 13(3). Except where it contains a declaration that it needs, by reason of urgency, to be made without such approval, no such order may be made by the Secretary of State under s 13 unless a draft of it has been laid before Parliament and approved by a resolution of each House: see s 13(4)-(6), (10). Pursuant to this power the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2009, SI 2009/554, which provides that the Prevention of Terrorism Act 2005 ss 1-9 continue in force for a period of one year beginning with 11 March 2009, has been made (superseding provision previously made by the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006, SI 2006/512, the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007, SI 2007/706, and the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008, SI 2008/559). Absent such provision the Prevention of Terrorism Act 2005 ss 1-9 would have expired at the end of 10 March 2006: see s 13(1). Where such an order ceases to have effect in accordance with s 13(6), that does not affect anything previously done in reliance on the order, or prevent the making of a new order to the same or similar effect (s 13(7)), and where ss 1-9 expire or are repealed at any time by virtue of s 13, that does not prevent or otherwise affect:

795 (1) the court's consideration of a reference made before that time under s 3(3)(a) (see PARA 511 note 3) (s 13(8)(a));

- 796 (2) the holding or continuation after that time of any hearing in pursuance of directions under s 3(2)(c) or s 3(6)(b) or (c) (see PARAS 510, 511) (s 13(8)(b));
- 797 (3) the holding or continuation after that time of a hearing to determine whether to confirm a derogating control order (with or without modifications) (see PARAS 514-516) (s 13(8)(c)); or
- 798 (4) the bringing or continuation after that time of any appeal, or further appeal, relating to a decision in any proceedings mentioned in heads (1)-(3) above (s 13(8)(d)),

but proceedings may be begun or continued so far only as they are for the purpose of determining whether a certificate of the Secretary of State, a control order or an obligation imposed by such an order should be quashed or treated as quashed (s 13(8)).

Nothing in the Prevention of Terrorism Act 2005 about the period for which a control order is to have effect or is renewed enables such an order to continue in force after the provision under which it was made or last renewed has expired or been repealed by virtue of s 13: see s 13(9).

The Secretary of State is required to prepare, and lay before Parliament, every three months a report about the exercise of the control order powers during that period; and the Secretary of State must appoint a person to review the operation of the Prevention of Terrorism Act 2005 on an annual basis while ss 1-9 are in force, and must lay a copy of the report before Parliament: see s 14.

2 Prevention of Terrorism Act 2005 s 1(2)(a). As to the obligations which may be imposed see PARA 507. As to the making of orders under head (1) in the text see PARAS 508-510.

See *Secretary of State for the Home Department v JJ* [2007] UKHL 45, [2008] 1 AC 385, [2008] 1 All ER 613 (affg [2006] EWCA Civ 1141, [2007] QB 446, [2006] All ER (D) 08 (Aug)) (the Secretary of State made non-derogating control orders which imposed restrictive obligations on the defendants, the cumulative effect of which was to deprive the defendants of their liberty in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5 (right to liberty and security of the person: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 127); the Secretary of State had effectively made derogating control orders which he had no power to make and they were therefore unlawful). In this regard see further *Secretary of State for the Home Department v MB* [2007] UKHL 46, [2008] 1 AC 440, [2008] 1 All ER 657; *Secretary of State for the Home Department v E* [2007] UKHL 47, [2008] 1 AC 499, [2008] 1 All ER 699.

3 'Derogating obligation' means an obligation on an individual which is incompatible with his right to liberty under the European Convention on Human Rights art 5, but is of a description of obligations which, for the purposes of the designation of a designated derogation, is set out in the designation order: Prevention of Terrorism Act 2005 s 1(10). 'Designated derogation' has the same meaning as in the Human Rights Act 1998 s 14(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): Prevention of Terrorism Act 2005 s 1(10). 'Designation order', in relation to a designated derogation, means the order under the Human Rights Act 1998 s 14(1) by which the derogation is designated: Prevention of Terrorism Act 2005 s 1(10).

4 In England and Wales 'court' means the High Court: Prevention of Terrorism Act 2005 s 15(1). The court is the appropriate tribunal for the purposes of the Human Rights Act 1998 s 7 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) in relation to proceedings all or any part of which call a control order decision or derogation matter into question (Prevention of Terrorism Act 2005 s 11(2)), and provision in connection with such proceedings and any other proceedings in the court for questioning a control order decision or a derogation matter (see below) ('control order proceedings') is made by s 11(5), (6)(h)-(j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). 'Control order decision' means:

- 799 (1) a decision made by the Secretary of State in exercise or performance of any power or duty of his under any of the Prevention of Terrorism Act 2005 ss 1-8 (see PARA 507 et seq) or for the purposes of or in connection with the exercise or performance of any such power or duty (s 11(7)(a));
- 800 (2) a decision by any other person to give a direction, consent or approval, or to issue a demand, for the purposes of any obligation imposed by a control order (s 11(7)(b)); or
- 801 (3) a decision by any person that is made for the purposes of or in connection with the exercise of his power to give such a direction, consent or approval or to issue such a demand (s 11(7)(c)).

'Derogation matter' means:

- 802 (a) a derogation by the United Kingdom from the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) which relates to infringement of a person's right to liberty under art 5 (right to liberty and security of the person: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 127) in

consequence of obligations imposed on him by a control order or of his arrest or detention under the Prevention of Terrorism Act 2000 s 5 (see PARA 519) (s 11(8)(a)); or

- 803 (b) the designation of such a derogation under the Human Rights Act 1998 s 14(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) (Prevention of Terrorism Act 2005 s 11(8)(b)).

Control order decisions and derogation matters are not to be questioned in any legal proceedings other than proceedings in the court or proceedings on appeal from such proceedings: s 11(1). No appeal lies from any determination of the court in control order proceedings, except on a question of law: s 11(3).

⁵ Prevention of Terrorism Act 2005 s 1(2)(b). As to the making of orders under head (2) in the text see PARA 516.

UPDATE

506 Power to make control orders

NOTE 1--The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2010, SI 2010/645, which provides that the Prevention of Terrorism Act 2005 ss 1-9 continue in force for a period of one year beginning with 11 March 2010, has been made.

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507. Obligations which may be imposed by control orders.

The obligations that may be imposed by a control order¹ made against an individual are any obligations that the Secretary of State or (as the case may be) the court² considers necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity³. Those obligations may include⁴, in particular:

- 1689 (1) a prohibition or restriction on his possession or use of specified articles or substances⁵;
- 1690 (2) a prohibition or restriction on his use of specified services or specified facilities, or on his carrying on specified activities⁶;
- 1691 (3) a restriction in respect of his work or other occupation, or in respect of his business⁷;
- 1692 (4) a restriction on his association or communications with specified persons or with other persons generally⁸;
- 1693 (5) a restriction in respect of his place of residence or on the persons to whom he gives access to his place of residence⁹;
- 1694 (6) a prohibition on his being at specified places or within a specified area at specified times or on specified days¹⁰;
- 1695 (7) a prohibition or restriction on his movements to, from or within the United Kingdom, a specified part of the United Kingdom, or a specified place or area within the United Kingdom¹¹;
- 1696 (8) a requirement on him to comply with such other prohibitions or restrictions on his movements as may be imposed, for a period not exceeding 24 hours, by directions given to him in the specified manner, by a specified person and for the purpose of securing compliance with other obligations imposed by or under the order¹²;
- 1697 (9) a requirement on him to surrender his passport¹³, or anything in his possession to which a prohibition or restriction imposed by the order relates, to a specified person for a period not exceeding the period for which the order remains in force¹⁴;
- 1698 (10) a requirement on him to give access to specified persons to his place of residence or to other premises to which he has power to grant access¹⁵;
- 1699 (11) a requirement on him to allow specified persons to search that place or any such premises for the purpose of ascertaining whether obligations imposed by or under the order have been, are being or are about to be contravened¹⁶;
- 1700 (12) a requirement on him to allow specified persons, either for that purpose or for the purpose of securing that the order is complied with, to remove anything found in that place or on any such premises and to subject it to tests or to retain it for a period not exceeding the period for which the order remains in force¹⁷;
- 1701 (13) a requirement on him to allow himself to be photographed¹⁸;
- 1702 (14) a requirement on him to co-operate with specified arrangements for enabling his movements, communications or other activities to be monitored by electronic or other means¹⁹;
- 1703 (15) a requirement on him to comply with a demand made in the specified manner to provide information to a specified person in accordance with the demand²⁰; and

1704 (16) a requirement on him to report to a specified person at specified times and places²¹.

1 As to the meaning of 'control order' see PARA 506.

2 As to the court see PARA 506 note 4.

3 Prevention of Terrorism Act 2005 s 1(3). 'Involvement in terrorism-related activity' is any one or more of:

804 (1) the commission, preparation or instigation of acts of terrorism (s 1(9)(a));

805 (2) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so (s 1(9)(b));

806 (3) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so (s 1(9)(c)); and

807 (4) conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within heads (1)-(3) above (s 1(9)(d) (amended by the Counter-Terrorism Act 2008 s 79(2))).

For these purposes, it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally (Prevention of Terrorism Act 2005 s 1(9)) and it is immaterial for the purposes of determining what obligations may be imposed by a control order made by the Secretary of State whether the involvement in terrorism-related activity to be prevented or restricted by the obligations is connected with matters to which the Secretary of State's grounds for suspicion relate (s 2(9)). 'Act of terrorism' includes anything constituting an action taken for the purpose of terrorism, within the meaning of the Terrorism Act 2000 s 1(5) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383); Prevention of Terrorism Act 2005 s 15(1). 'Act' and 'conduct' include omissions and statements: s 15(1). As to the meaning of 'terrorism' see PARA 506 note 1.

A control order may provide for a prohibition, restriction or requirement imposed by or under the order to apply only where a specified person has not given his consent or approval to what would otherwise contravene the prohibition, restriction or requirement: s 1(8).

4 The general language of the Prevention of Terrorism Act 2005 s 1(3) is insufficient to authorise the inclusion in a control order of a general requirement to submit to searches of the person, whether on the demand of anyone authorised by the Secretary of State or only of a police officer: see *Secretary of State for the Home Department v GG (proceedings under the Prevention of Terrorism Act 2005)* [2009] EWCA Civ 786, (2009) Times, 21 October, [2009] All ER (D) 247 (Jul).

5 Prevention of Terrorism Act 2005 s 1(4)(a).

6 Prevention of Terrorism Act 2005 s 1(4)(b).

7 Prevention of Terrorism Act 2005 s 1(4)(c).

8 Prevention of Terrorism Act 2005 s 1(4)(d).

9 Prevention of Terrorism Act 2005 s 1(4)(e).

10 Prevention of Terrorism Act 2005 s 1(4)(f).

11 Prevention of Terrorism Act 2005 s 1(4)(g). Power by or under a control order to prohibit or restrict the controlled person's movements includes, in particular, power to impose a requirement on him to remain at or within a particular place or area (whether for a particular period or at particular times or generally): s 1(5). As to the meaning of 'controlled person' see PARA 506 note 1.

12 Prevention of Terrorism Act 2005 s 1(4)(h).

13 'Passport' means a United Kingdom passport (within the meaning of the Immigration Act 1971: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 78), a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom, or by or on behalf of an international organisation, or a document that can be used (in some or all circumstances) instead of a passport: Prevention of Terrorism Act 2005 s 15(1).

14 Prevention of Terrorism Act 2005 s 1(4)(i).

15 Prevention of Terrorism Act 2005 s 1(4)(j). As to the meaning of 'premises' see PARA 506 note 1. If a constable reasonably suspects that the controlled person is not granting access to premises, as required by an obligation imposed by or under the control order, at a time when the controlled person is required, by an obligation so imposed, to be at those premises, he may enter (if necessary by force) and search the premises:

808 (1) for the purpose of determining whether any of the obligations imposed by or under the control order have been contravened (s 7B(1), (2)(a) (ss 7B, 9(3A) added, s 9(7) amended, by the Counter-Terrorism Act 2008 s 78(1), (2))); and

809 (2) if it appears that an obligation has been contravened, for material that may assist in the investigation of the contravention (Prevention of Terrorism Act 2005 s 7B(2)(b) (as so added)).

A person is guilty of an offence if he intentionally obstructs the exercise by a constable of a power under s 7B: s 9(3A) (as so added). A person guilty of an offence under s 9(3A) is liable on summary conviction in England and Wales, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: s 9(7)(a) (as so amended). In relation to an offence committed after the commencement of the Criminal Justice Act 2003 s 281(5) (not yet in force), the reference to six months is to be read as a reference to 51 weeks: see the Prevention of Terrorism Act 2005 s 9(8). As to the standard scale see PARA 142.

16 Prevention of Terrorism Act 2005 s 1(4)(k).

17 Prevention of Terrorism Act 2005 s 1(4)(l).

18 Prevention of Terrorism Act 2005 s 1(4)(m).

19 Prevention of Terrorism Act 2005 s 1(4)(n). The reference in this provision to co-operating with specified arrangements for monitoring includes a reference to each of:

810 (1) submitting to procedures required by the arrangements (s 1(6)(a));

811 (2) wearing or otherwise using apparatus approved by or in accordance with the arrangements (s 1(6)(b));

812 (3) maintaining such apparatus in the specified manner (s 1(6)(c));

813 (4) complying with directions given by persons carrying out functions for the purposes of those arrangements (s 1(6)(d)).

'Specified' means specified in the control order or within a description so specified; 'apparatus' includes any equipment, machinery or device and any wire or cable, together with any software used with it; and 'article' and 'information' include documents and records, and software: s 15(1).

20 Prevention of Terrorism Act 2005 s 1(4)(o). The information that the controlled person may be required to provide under a control order includes, in particular, advance information about his proposed movements or other activities: s 1(7).

21 Prevention of Terrorism Act 2005 s 1(4)(p).

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B. NON-DEROGATING CONTROL ORDERS

508. Making of non-derogating control order.

A control order¹ made by the Secretary of State is called a non-derogating control order². The Secretary of State may make a control order against an individual if he:

- 1705 (1) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activity³; and
- 1706 (2) considers that it is necessary, for purposes connected with protecting members of the public⁴ from a risk of terrorism⁵, to make a control order imposing obligations on that individual⁶.

The Secretary of State may make a control order against an individual who is for the time being bound by a control order made by the court⁷ only if he does so:

- 1707 (a) after the court has determined that its order should be revoked⁸; but
- 1708 (b) while the effect of the revocation has been postponed for the purpose of giving the Secretary of State an opportunity to decide whether to exercise his own powers to make a control order against the individual⁹.

1 As to the meaning of 'control order' see PARA 506. A control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the order, although this does not prevent the proof of a control order in other ways: Prevention of Terrorism Act 2005 s 7(11)(a).

2 Prevention of Terrorism Act 2005 s 2(3). See *Secretary of State for the Home Department v JJ* [2007] UKHL 45, [2008] 1 AC 385, [2008] 1 All ER 613 (affg [2006] EWCA Civ 1141, [2007] QB 446, [2006] All ER (D) 08 (Aug)) (where the restrictive obligations imposed on the defendants by the Secretary of State in the control order had the cumulative effect of depriving the defendants of their liberty contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5 (right to liberty and security of the person: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 127); it was held that the Secretary of State had effectively made derogating control orders (see PARA 514) which he had no power to make, and the orders were therefore unlawful).

3 Prevention of Terrorism Act 2005 s 2(1)(a). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3. As to criminal investigations and prosecutions of individuals in respect of which control orders are intended to, or have been, made see s 8; and PARA 521.

4 For these purposes, 'the public' means the public in the whole or a part of the United Kingdom or the public in another country or territory, or any section of the public: Prevention of Terrorism Act 2005 s 15(1). As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 As to the meaning of 'terrorism' see PARA 506 note 1.

6 Prevention of Terrorism Act 2005 s 2(1)(b). As to supervision of the making of such an order by the court see PARA 510; as to contravention of such an order see PARA 523.

7 As to the court see PARA 506 note 4.

8 Prevention of Terrorism Act 2005 s 2(2)(a).

9 Prevention of Terrorism Act 2005 s 2(2)(b).

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509. Duration and renewal of non-derogating control order.

A non-derogating control order¹ has effect for a period of 12 months beginning with the day on which it is made, but may be renewed on one or more occasions². The Secretary of State may renew a non-derogating control order (with or without modifications) for a period of 12 months if he:

- 1709 (1) considers that it is necessary, for purposes connected with protecting members of the public³ from a risk of terrorism⁴, for an order imposing obligations on the controlled person to continue in force⁵; and
- 1710 (2) considers that the obligations to be imposed by the renewed order are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity⁶.

Where the Secretary of State renews a non-derogating control order, the 12-month period of the renewal begins to run from whichever is the earlier of the time when the order would otherwise have ceased to have effect or the beginning of the seventh day after the date of renewal⁷. Where a non-derogating control order has been renewed the controlled person may appeal to the court against the renewal⁸.

1 As to the meaning of 'non-derogating control order' see PARA 508.

2 Prevention of Terrorism Act 2005 s 2(4). A non-derogating control order must specify when the period for which it is to have effect will end: s 2(5). The controlled person (see PARA 506 note 1) is bound by the renewal of a control order only if a notice setting out the terms of the renewal has been delivered to him in person: s 7(8)(b). As to the delivery of a notice under s 7(8) see ss 7(9), 9(3), (7)(a), (8); and PARA 506 note 1. The renewal of a control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the instrument of renewal, although this does not prevent the proof of the renewal of such an order in other ways: s 7(11)(b).

3 As to the meaning of 'the public' see PARA 508 note 4.

4 As to the meaning of 'terrorism' see PARA 506 note 1.

5 Prevention of Terrorism Act 2005 s 2(6)(a).

6 Prevention of Terrorism Act 2005 s 2(6)(b). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3.

7 Prevention of Terrorism Act 2005 s 2(7). The instrument renewing a non-derogating control order must specify when the period for which it is renewed will end: s 2(8).

8 Prevention of Terrorism Act 2005 s 10(1)(a). In the case of an appeal against a renewal with modifications, the appeal may include an appeal against some or all of the modifications: s 10(2). As to the functions of the court on an appeal see PARA 513. Provision in connection with proceedings on an appeal under s 10 ('control order proceedings') is made by s 11(5), (6)(g), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

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510. Supervision by court of making of non-derogating control orders.

The Secretary of State must not make a non-derogating control order¹ against an individual except where:

- 1711 (1) having decided that there are grounds to make such an order against that individual, he has applied to the court² for permission to make the order and has been granted that permission³; or
- 1712 (2) the order contains a statement by the Secretary of State that, in his opinion, the urgency of the case requires the order to be made without such permission⁴.

Where the Secretary of State makes an application for permission to make a non-derogating control order against an individual, the application must set out the order for which he seeks permission and:

- 1713 (a) the function of the court is to consider whether the Secretary of State's decision that there are grounds to make that order is obviously flawed⁵;
- 1714 (b) the court may give that permission unless it determines that the decision is obviously flawed⁶; and
- 1715 (c) if it gives permission, the court must give directions for a hearing in relation to the order as soon as reasonably practicable after it is made⁷.

In every other case, the court must decide that the control order is to continue in force⁸.

1 As to the meaning of 'non-derogating control order' see PARA 508.

2 As to the court see PARA 506 note 4.

3 Prevention of Terrorism Act 2005 s 3(1)(a). The court may consider an application for permission:

814 (1) in the absence of the individual in question (s 3(5)(a));

815 (2) without his having been notified of the application (s 3(5)(b)); and

816 (3) without his having been given an opportunity (if he was aware of the application or reference) of making any representations to the court (s 3(5)(c)).

However, s 3(5) is not to be construed as limiting the matters about which rules of court may be made in relation to the consideration of such an application: s 3(5). Provision in connection with proceedings on an application for permission under s 3(1)(a) ('control order proceedings') is made by s 11(5), (6)(a), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). No appeal by any person other than the Secretary of State lies from any determination on an application for permission under the Prevention of Terrorism Act 2005 s 3(1)(a): s 11(4)(a).

In connection with the compatibility (or otherwise) of s 3 with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (the presumption of innocence and right to a fair trial: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq) see *Secretary of State for the Home Department v MB* [2007] UKHL 46, [2008] 1 AC 440, [2008] 1 All ER 657.

4 Prevention of Terrorism Act 2005 s 3(1)(b).

5 Prevention of Terrorism Act 2005 s 3(2)(a).

6 Prevention of Terrorism Act 2005 s 3(2)(b).

7 Prevention of Terrorism Act 2005 s 3(2)(c). The directions given under s 3(2)(c) must include arrangements for the individual in question to be given an opportunity to make representations about the directions already given and about the making of further directions: s 3(7) (s 3(7) amended, s 3(7A) added, by the Counter-Terrorism Act 2008 s 80, Sch 9 Pt 5). The individual must be given the opportunity to make those representations within seven days of notice of the terms of the control order being delivered to the individual in accordance with the Prevention of Terrorism Act 2005 s 7(8): s 3(7A)(a) (as so added).

Provision in connection with proceedings on a hearing in pursuance of directions under s 3(2)(c) ('control order proceedings') is made by s 11(5), (6)(c), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). On a hearing in pursuance of directions under the Prevention of Terrorism Act 2005 s 3(2)(c) the function of the court is to determine whether any of the following decisions of the Secretary of State was flawed: first, his decision that the requirements under s 2(1) (see PARA 508) were satisfied for the making of the order; and secondly his decisions on the imposition of each of the obligations imposed by the order: s 3(10). In determining what constitutes a flawed decision for the purposes of s 3(2), or in determining the matters mentioned in s 3(10) (see above), the court must apply the principles applicable on an application for judicial review: s 3(11).

In connection with the information that a controlled person must be given for the purposes of a hearing under s 3(10), with particular reference to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5 (right to liberty and security: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 127-133), art 6 (right to a fair trial: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 134-147) and art 8 (right to respect for private and family life: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq) see *BM v Secretary of State for the Home Department* [2009] EWHC 1572 (Admin), [2009] All ER (D) 32 (Jul); *Secretary of State for the Home Department v AF (No 3)* [2009] UKHL 28, [2009] 3 All ER 643, [2009] (the requirement under art 6(1) of the Convention that the hearing be fair would not be satisfied unless the controlee was provided with sufficient information to enable him to give effective instructions to the special advocate who represented him) (approving the decision of the European Court of Human Rights in *A v United Kingdom (Application 3455/05)* (2009) 26 BHRC 1, [2009] All ER (D) 203 (Feb)). The wording of the Prevention of Terrorism Act 2005 s 3(10) does not indicate that Parliament intended to exclude the normal principle of public law that a decision, in particular a judicial decision, made between parties should be respected in subsequent proceedings: *Secretary of State for the Home Department v AF (No 2)* [2007] EWHC 2828 (Admin), [2008] 2 All ER 67. Convention rights may be regarded as civil rights in this context and therefore a breach of art 6 gives rise to a private law right to claim damages: see *BC v Secretary of State for the Home Department (proceedings under the Prevention of Terrorism Act 2005)* [2009] EWHC 1572 (Admin), [2009] All ER (D) 140 (Nov).

If the court determines, on a hearing in pursuance of directions under the Prevention of Terrorism Act 2005 s 3(2)(c), that a decision of the Secretary of State was flawed, its only powers are to quash the order, to quash one or more obligations imposed by the order, and to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes: s 3(12).

If requested to do so by the controlled person the court must discontinue any hearing in pursuance of directions under s 3(2)(c): s 3(14). As to the meaning of 'controlled person' see PARA 506 note 1.

8 Prevention of Terrorism Act 2005 s 3(13).

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511. Reference to court of non-derogating control order made without permission.

Where the Secretary of State makes a non-derogating control order¹ against an individual without the permission of the court², he must immediately refer the order to the court³. The function of the court on the reference is to consider whether the decision of the Secretary of State to make the order he did was obviously flawed⁴.

On a reference of the order the court:

- 1716 (1) if it determines that the decision of the Secretary of State to make a non-derogating control order against the controlled person⁵ was obviously flawed, must quash the order⁶;
- 1717 (2) if it determines that that decision was not obviously flawed but that a decision of the Secretary of State to impose a particular obligation by that order⁷ was obviously flawed, must quash that obligation and (subject to that) confirm the order and give directions for a hearing in relation to the confirmed order⁸; and
- 1718 (3) in any other case, must confirm the order and give directions for a hearing in relation to the confirmed order⁹.

In every other case, the court must decide that the control order is to continue in force¹⁰.

1 As to the meaning of 'non-derogating control order' see PARA 508.

2 As to the court see PARA 506 note 4.

3 Prevention of Terrorism Act 2005 s 3(3)(a). The court may consider a reference:

817 (1) in the absence of the individual in question (s 3(5)(a));

818 (2) without his having been notified of the reference (s 3(5)(b)); and

819 (3) without his having been given an opportunity (if he was aware of the application or reference) of making any representations to the court (s 3(5)(c)).

However, s 3(5) is not to be construed as limiting the matters about which rules of court may be made in relation to the consideration of such a reference: s 3(5). The court's consideration on such a reference must begin no more than seven days after the day on which the control order in question was made: s 3(4). The court must ensure that the controlled person is notified of its decision on a reference under s 3(3)(a): s 3(9). Provision in connection with proceedings on an application on a reference under s 3(3)(a) ('control order proceedings') is made by s 11(5), (6)(b), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). No appeal by any person other than the Secretary of State lies from any determination on a reference under the Prevention of Terrorism Act 2005 s 3(3)(a): s 11(4)(b).

In connection with the compatibility (or otherwise) of s 3 with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (the presumption of innocence and right to a fair trial: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq) see *Secretary of State for the Home Department v MB* [2007] UKHL 46, [2008] 1 AC 440, [2008] 1 All ER 657.

4 Prevention of Terrorism Act 2005 s 3(3)(b).

5 As to the meaning of 'controlled person' see PARA 506 note 1.

6 Prevention of Terrorism Act 2005 s 3(6)(a). On a reference under s 3(3)(a), the court may quash a certificate contained in the order for the purposes of s 3(1)(b) (see PARA 510) if it determines that the Secretary of State's decision that the certificate should be contained in the order was flawed: s 3(8). In determining what constitutes a flawed decision for the purposes of s 3(8) the court must apply the principles applicable on an application for judicial review: s 3(11). See also *Secretary of State for the Home Department v JJ* [2007] UKHL 45, [2008] 1 All ER 613 (affg [2006] EWCA Civ 1141, [2007] QB 446, [2006] All ER (D) 08 (Aug)).

A power under the Prevention of Terrorism Act 2005 to quash a control order, the renewal of such an order or an obligation imposed by such an order includes power, in England and Wales, to stay the quashing of the order, renewal or obligation pending an appeal, or further appeal, against the decision to quash: s 15(2).

7 As to the obligations which may be imposed by control orders see PARA 507.

8 Prevention of Terrorism Act 2005 s 3(6)(b). The directions given under s 3(6)(b) or (c) must include arrangements for the individual in question to be given an opportunity to make representations about the directions already given and about the making of further directions: s 3(7) (s 3(7) amended, s 3(7A) added, by the Counter-Terrorism Act 2008 s 80, Sch 9 Pt 5). The individual must be given the opportunity to make those representations within seven days of the court making its determination on the reference: Prevention of Terrorism Act 2005 s 7(8): s 3(7A)(b) (as so added).

Provision in connection with proceedings on a hearing in pursuance of directions under s 3(6)(b) or (c) ('control order proceedings') is made by s 11(5), (6)(c), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). On a hearing in pursuance of directions under the Prevention of Terrorism Act 2005 s 3(6)(b) or (c) the function of the court is to determine whether any of the following decisions of the Secretary of State was flawed: first, his decision that the requirements under s 2(1) (see PARA 508) were satisfied for the making of the order; and secondly his decisions on the imposition of each of the obligations imposed by the order: s 3(10). In determining what constitutes a flawed decision for the purposes of s 3(6), or in determining the matters mentioned in s 3(10) (see above), the court must apply the principles applicable on an application for judicial review: s 3(11). In connection with hearings under s 3(10) see PARA 510 note 7.

If the court determines, on a hearing in pursuance of directions under s 3(6)(b) or (c) that a decision of the Secretary of State was flawed, its only powers are to quash the order, to quash one or more obligations imposed by the order, and to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes: s 3(12).

If requested to do so by the controlled person the court must discontinue any hearing in pursuance of directions under s 3(6)(b) or (c): s 3(14).

9 Prevention of Terrorism Act 2005 s 3(6)(c). See note 8.

10 Prevention of Terrorism Act 2005 s 3(13).

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512. Revocation and modification of non-derogating control orders.

If while a non-derogating control order¹ is in force the controlled person² considers that there has been a change of circumstances affecting the order, he may make an application to the Secretary of State for the revocation of the order, or the modification³ of an obligation imposed by the order, and it is the duty of the Secretary of State to consider the application⁴. The Secretary of State may, at any time (whether or not in response to an application by the controlled person):

- 1719 (1) revoke a non-derogating control order⁵;
- 1720 (2) relax or remove an obligation imposed by such an order⁶;
- 1721 (3) with the consent of the controlled person, modify the obligations imposed by such an order⁷; or
- 1722 (4) make to the obligations imposed by such an order any modifications which he considers necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity⁸.

The Secretary of State may not make to the obligations imposed by a control order⁹ any modification the effect of which is that a non-derogating control order becomes an order imposing a derogating obligation¹⁰.

Where an obligation imposed by a non-derogating control order has been modified without the consent of the controlled person, or where an application is made by the controlled person to the Secretary of State for the revocation of a non-derogating control order or the modification of an obligation imposed by such an order, that person may appeal to the court¹¹ against the modification or, as the case may be, any decision by the Secretary of State on the application¹².

1 As to the meaning of 'non-derogating control order' see PARA 508.

2 As to the meaning of 'controlled person' see PARA 506 note 1.

3 'Modification' includes omission, addition or alteration: Prevention of Terrorism Act 2005 s 15(1).

4 Prevention of Terrorism Act 2005 s 7(1). For the purposes of the Prevention of Terrorism Act 2005 a failure by the Secretary of State to consider an application by the controlled person for the revocation of a control order, or the modification of an obligation imposed by such an order, is to be treated as a decision by the Secretary of State not to revoke or (as the case may be) not to modify the order: s 15(4). As to the obligations which may be imposed by control orders see PARA 507.

5 Prevention of Terrorism Act 2005 s 7(2)(a). Every power of the Secretary of State or of the court to revoke a control order or to modify the obligations imposed by such an order includes power to provide for the revocation or modification to take effect from such time as the Secretary of State or (as the case may be) the court may determine and, in the case of a revocation by the court (including a revocation in pursuance of s 7(7): see PARA 520) includes power to postpone the effect of the revocation either pending an appeal or for the purpose of giving the Secretary of State an opportunity to decide whether to exercise his own powers to make a control order against the individual in question: s 15(3). The revocation of a control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the instrument of revocation, although this does not prevent the proof of the revocation of such an order in other ways: s 7(11)(b).

6 Prevention of Terrorism Act 2005 s 7(2)(b). Where the Secretary of State revokes a control order or modifies it by virtue of s 7(2)(b) or (c) he must give notice of the revocation or modification to the controlled person, and the notice must set out the time from which the revocation or modification takes effect: s 7(10).

7 Prevention of Terrorism Act 2005 s 7(2)(c). See note 6. The modification of a control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the instrument of modification, although this does not prevent the proof of the modification of such an order in other ways: s 7(11)(b).

8 Prevention of Terrorism Act 2005 s 7(2)(d). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3. The controlled person (see PARA 506 note 1) is bound by the modification of a control order by virtue of s 7(2)(d) only if a notice setting out the terms of the modification has been delivered to him in person: s 7(8)(c). As to the delivery of a notice under s 7(8) see ss 7(9), 9(3), (7)(a), (8); and PARA 506 note 1.

9 As to the meaning of 'control order' see PARA 506.

10 Prevention of Terrorism Act 2005 s 7(3). As to the meaning of 'derogating obligation' see PARA 506 note 3. As to appeals see PARA 513.

11 As to the court see PARA 506 note 4.

12 Prevention of Terrorism Act 2005 s 10(1)(b), (3). As to the functions of the court on an appeal see PARA 513. Provision in connection with proceedings on an appeal under s 10 ('control order proceedings') is made by s 11(5), (6)(g), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). See also *AV v Secretary of State for the Home Department* [2008] EWHC 1895 (Admin), [2009] 1 All ER 439, [2009] 1 WLR 2318.

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513. Appeals relating to non-derogating control orders.

The function of the court¹ on an appeal against the renewal of a non-derogating control order², or on an appeal against a decision not to revoke such an order³, is to determine whether either or both of the following decisions of the Secretary of State were flawed:

- 1723 (1) his decision that it is necessary, for purposes connected with protecting members of the public⁴ from a risk of terrorism⁵, for an order imposing obligations⁶ on the controlled person⁷ to continue in force⁸;
- 1724 (2) his decision that the obligations to be imposed by the renewed order, or (as the case may be) the obligations imposed by the order to which the application for revocation relates, are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity⁹.

The function of the court on an appeal against a modification of an obligation imposed by a non-derogating control order (whether on a renewal or otherwise), or on an appeal against a decision not to modify such an obligation¹⁰, is to determine whether the following decision of the Secretary of State was flawed:

- 1725 (a) in the case of an appeal against a modification, his decision that the modification is necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity¹¹; and
- 1726 (b) in the case of an appeal against a decision on an application for the modification of an obligation, his decision that the obligation continues to be necessary for that purpose¹².

In determining these matters the court must apply the principles applicable on an application for judicial review¹³.

If the court determines on such an appeal that a decision of the Secretary of State was flawed, its only powers are:

- 1727 (i) to quash¹⁴ the renewal of the order¹⁵;
- 1728 (ii) to quash one or more obligations imposed by the order¹⁶; and
- 1729 (iii) to give directions to the Secretary of State for the revocation of the order or for the modification of the obligations it imposes¹⁷.

In every other case, the court must dismiss the appeal¹⁸.

1 As to the court see PARA 506 note 4.

2 See PARA 509. As to the meaning of 'non-derogating control order' see PARA 508.

3 See PARA 512.

4 As to the meaning of 'the public' see PARA 508 note 4.

- 5 As to the meaning of 'terrorism' see PARA 506 note 1.
- 6 As to the obligations which may be imposed by control orders see PARA 507.
- 7 As to the meaning of 'controlled person' see PARA 506 note 1.
- 8 Prevention of Terrorism Act 2005 s 10(4)(a).
- 9 Prevention of Terrorism Act 2005 s 10(4)(b). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3.
- 10 See PARA 512.
- 11 Prevention of Terrorism Act 2005 s 10(5)(a).
- 12 Prevention of Terrorism Act 2005 s 10(5)(b).
- 13 Prevention of Terrorism Act 2005 s 10(6).
- 14 As to the power to quash a control order see s 15(2); and PARA 511 note 6.
- 15 Prevention of Terrorism Act 2005 s 10(7)(a).
- 16 Prevention of Terrorism Act 2005 s 10(7)(b).
- 17 Prevention of Terrorism Act 2005 s 10(7)(c).
- 18 Prevention of Terrorism Act 2005 s 10(8).

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C. DEROGATING CONTROL ORDERS

514. Applications for derogating control orders.

On an application to the court¹ by the Secretary of State for the making of a control order² against an individual, the court must:

- 1730 (1) hold an immediate preliminary hearing to determine whether to make a control order imposing obligations that are or include derogating obligations³ (called a 'derogating control order') against that individual⁴; and
- 1731 (2) if it does make such an order against that individual, give directions for the holding of a full hearing to determine whether to confirm the order (with or without modifications)⁵.

1 As to the court see PARA 506 note 4.

2 As to the meaning of 'control order' see PARA 506. A control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the order, although this does not prevent the proof of a control order in other ways: Prevention of Terrorism Act 2005 s 7(11)(a).

3 As to the meaning of 'derogating obligation' see PARA 506 note 3. As to the obligations which may be imposed by control orders see PARA 507.

4 Prevention of Terrorism Act 2005 s 4(1)(a). As to the preliminary hearing see PARA 515. As to the obligations which may be imposed by control orders see PARA 507. As to criminal investigations and prosecutions of individuals in respect of which control orders are intended to, or have been, made see s 8; and PARA 521.

5 Prevention of Terrorism Act 2005 s 4(1)(b). As to the full hearing see PARA 516.

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515. The preliminary hearing.

The preliminary hearing¹ to determine whether to make a derogating control order² may be held in the absence of the individual in question, without his having had notice of the application for the order and without his having been given an opportunity (if he was aware of the application) of making any representations to the court³. At the preliminary hearing the court⁴ may make a control order⁵ against the individual in question if it appears to the court:

- 1732 (1) that there is material which (if not disproved) is capable of being relied on by the court as establishing that the individual is or has been involved in terrorism-related activity⁶;
- 1733 (2) that there are reasonable grounds for believing that the imposition of obligations on that individual is necessary for purposes connected with protecting members of the public from a risk of terrorism⁷;
- 1734 (3) that the risk arises out of, or is associated with, a public emergency in respect of which there is a designated derogation⁸ from the whole or a part of the right to liberty under the European Convention on Human Rights⁹; and
- 1735 (4) that the obligations that there are reasonable grounds for believing should be imposed on the individual are or include derogating obligations¹⁰ of a description set out for the purposes of the designated derogation in the designation order¹¹.

1 le under the Prevention of Terrorism Act 2005 s 4(1)(a): see PARA 514. Provision in connection with proceedings on an application to the court by any person for the making of a derogating control order ('control order proceedings') is made by s 11(5), (6)(d), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

2 As to the meaning of 'derogating control order' see PARA 514.

3 Prevention of Terrorism Act 2005 s 4(2). However, s 4(2) is not to be construed as limiting the matters about which rules of court may be made in relation to that hearing: s 4(2).

4 As to the court see PARA 506 note 4.

5 As to the meaning of 'control order' see PARA 506.

6 Prevention of Terrorism Act 2005 s 4(3)(a). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3. It is immaterial, for the purposes of determining what obligations may be imposed by a control order made by the court, whether the involvement in terrorism-related activity to be prevented or restricted by the obligations is connected with matters in relation to which the requirements of s 4(3)(a) were satisfied: s 4(13).

7 Prevention of Terrorism Act 2005 s 4(3)(b). As to the meaning of 'terrorism' see PARA 506 note 1. As to the obligations which may be imposed by control orders see PARA 507. The obligations that may be imposed by a derogating control order in the period between the time when the order is made, and the time when a final determination is made by the court whether to confirm it, include any obligations which the court has reasonable grounds for considering are necessary as mentioned in s 1(3) (see PARA 507): s 4(4).

8 As to the meaning of 'designated derogation' see PARA 506 note 3.

9 Prevention of Terrorism Act 2005 s 4(3)(c). As to the right to liberty see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 127-133.

10 As to the meaning of 'derogating obligation' see PARA 506 note 3.

- 11 Prevention of Terrorism Act 2005 s 4(3)(d). As to the meaning of 'designation order' see PARA 506 note 3.

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516. The full hearing.

At the full hearing¹ to determine whether to make a derogating control order² the court³ may confirm the control order⁴ made by the court or may revoke the order⁵. In confirming a control order, the court may modify the obligations imposed by the order⁶, and where a modification made by the court removes an obligation, the court may (if it thinks fit) direct that the Prevention of Terrorism Act 2005 is to have effect as if the removed obligation had been quashed⁷. At the full hearing, the court may confirm the control order (with or without modifications) only if:

- 1736 (1) it is satisfied, on the balance of probabilities, that the controlled person⁸ is an individual who is or has been involved in terrorism-related activity⁹;
- 1737 (2) it considers that the imposition of obligations on the controlled person is necessary for purposes connected with protecting members of the public¹⁰ from a risk of terrorism¹¹;
- 1738 (3) it appears to the court that the risk is one arising out of, or is associated with, a public emergency in respect of which there is a designated derogation¹² from the whole or a part of the right to liberty under the European Convention on Human Rights¹³; and
- 1739 (4) the obligations to be imposed by the order or (as the case may be) by the order as modified are or include derogating obligations¹⁴ of a description set out for the purposes of the designated derogation in the designation order¹⁵.

1 Ie under the Prevention of Terrorism Act 2005 s 4(1)(a): see PARA 514. Provision in connection with proceedings on an application to the court by any person for the making of a derogating control order ('control order proceedings') is made by s 11(5), (6)(d), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

2 As to the meaning of 'derogating control order' see PARA 514.

3 As to the court see PARA 506 note 4.

4 As to the meaning of 'control order' see PARA 506. Provision in connection with proceedings at or in connection with a hearing to determine whether to confirm a derogating control order (with or without modifications) ('control order proceedings') is made by s 11(5), (6)(f), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

5 Prevention of Terrorism Act 2005 s 4(5). Where the court revokes the order, it may (if it thinks fit) direct that the Prevention of Terrorism Act 2005 is to have effect as if the order had been quashed: s 4(5). The revocation of a control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the instrument of revocation, although this does not prevent the proof of the revocation of such an order in other ways: s 7(11)(b).

6 Prevention of Terrorism Act 2005 s 4(6)(a). As to the obligations which may be imposed by control orders see PARA 507.

7 Prevention of Terrorism Act 2005 s 4(6)(b).

8 As to the meaning of 'controlled person' see PARA 506 note 1.

9 Prevention of Terrorism Act 2005 s 4(7)(a). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3. It is immaterial, for the purposes of determining what obligations may be imposed by a control order made by the court, whether the involvement in terrorism-related activity to be prevented or

restricted by the obligations is connected with matters in relation to which the requirements of s 4(7)(a) were satisfied: s 4(13).

10 As to the meaning of 'the public' see PARA 508 note 4.

11 Prevention of Terrorism Act 2005 s 4(7)(b). As to the meaning of 'terrorism' see PARA 506 note 1.

12 As to the meaning of 'designated derogation' see PARA 506 note 3.

13 Prevention of Terrorism Act 2005 s 4(7)(c). As to the right to liberty see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 127-133.

14 As to the meaning of 'derogating obligation' see PARA 506 note 3.

15 Prevention of Terrorism Act 2005 s 4(7)(d). As to the meaning of 'designation order' see PARA 506 note 3.

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517. Effect of derogating control orders.

A derogating control order¹ has effect at a time only if:

- 1740 (1) the relevant derogation² remains in force at that time³; and
 - 1741 (2) that time is not more than 12 months after:
- .22
- 29. (a) the making⁴ of the order designating that derogation⁵; or
 - 30. (b) the making by the Secretary of State of an order declaring that it continues to be necessary for him to have power to impose derogating obligation by reference to that derogation⁶.

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1 As to the meaning of 'derogating control order' see PARA 514.

2 'Relevant derogation', in relation to a derogating control order, means the designated obligation by reference to which the derogating obligations imposed by the order were imposed: Prevention of Terrorism Act 2005 s 6(7). As to the meaning of 'derogating obligation' see PARA 506 note 3.

3 Prevention of Terrorism Act 2005 s 6(1)(a).

4 Ie under the Human Rights Act 1998 s 14(1): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 Prevention of Terrorism Act 2005 s 6(1)(b)(i).

6 Prevention of Terrorism Act 2005 s 6(1)(b)(ii). The power of the Secretary of State to make an order containing a declaration for the purposes of s 6(1)(b)(ii) is exercisable by statutory instrument: s 6(2). No order may be made by the Secretary of State containing such a declaration unless a draft of it has been laid before Parliament and approved by a resolution of each House: s 6(3). However, s 6(3) does not apply to an order that contains a statement by the Secretary of State that the order needs, by reason of urgency, to be made without the approval required by s 6(3): s 6(4). An order under s 6 that contains such a statement must be laid before Parliament after being made, and if not approved by a resolution of each House before the end of 40 days (computed as provided for in the Statutory Instruments Act 1946 s 7(1): see **STATUTES** vol 44(1) (Reissue) PARA 1515) beginning with the day on which the order was made, ceases to have effect at the end of that period: Prevention of Terrorism Act 2005 s 6(5), (7). Where an order ceases to have effect in accordance with s 6(5), that does not affect anything previously done in reliance on the order, or prevent the Secretary of State from exercising any power of his to make a new order for the purposes of s 6(1)(b)(ii) to the same or similar effect: s 6(6).

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518. Duration and renewal of derogating control orders.

A derogating control order¹ ceases to have effect at the end of the period of six months beginning with the day on which it is made unless it is previously revoked (whether at the full hearing² or otherwise³), or it ceases to have effect⁴ or it is renewed⁵.

The court⁶, on an application by the Secretary of State, may renew a derogating control order (with or without modifications) for a period of six months from whichever is the earlier of the time when the order would otherwise have ceased to have effect, and the beginning of the seventh day after the date of renewal⁷.

The power of the court to renew a derogating control order is exercisable on as many occasions as the court thinks fit; but, on each occasion, it is exercisable only if:

- 1742 (1) the court considers that it is necessary, for purposes connected with protecting members of the public⁸ from a risk of terrorism⁹, for a derogating control order to continue in force against the controlled person¹⁰;
- 1743 (2) it appears to the court that the risk is one arising out of, or is associated with, a public emergency in respect of which there is a designated derogation¹¹ from the whole or a part of the right to liberty under the European Convention on Human Rights¹²;
- 1744 (3) the derogating obligations¹³ that the court considers should continue in force are of a description that continues to be set out for the purposes of the designated derogation in the designation order¹⁴; and
- 1745 (4) the court considers that the obligations to be imposed by the renewed order are necessary for purposes connected with preventing or restricting involvement by that person in terrorism-related activity¹⁵.

Where, on an application for the renewal of a derogating control order, it appears to the court that the proceedings on the application are unlikely to be completed before the time when the order is due to cease to have effect if not renewed, and that that is not attributable to an unreasonable delay on the part of the Secretary of State in the making or conduct of the application, the court may (on one or more occasions) extend the period for which the order is to remain in force for the purpose of keeping it in force until the conclusion of the proceedings¹⁶.

1 As to the meaning of 'derogating control order' see PARA 514.

2 Ie under the Prevention of Terrorism Act 2005 s 4(1)(b): see PARA 514.

3 Ie under the Prevention of Terrorism Act 2005.

4 Ie under the Prevention of Terrorism Act 2005 s 6: see PARA 517.

5 Prevention of Terrorism Act 2005 s 4(8). The controlled person (see PARA 506 note 1) is bound by the renewal of a control order only if a notice setting out the terms of the renewal has been delivered to him in person: s 7(8)(b). As to the delivery of a notice under s 7(8) see ss 7(9), 9(3), (7)(a), (8); and PARA 506 note 1. The renewal or revocation of a control order may be proved by the production of a document purporting to be

certified by the Secretary of State or the court as a true copy of the instrument of renewal or revocation, although this does not prevent the proof of the renewal or revocation of such an order in other ways: s 7(11)(b).

6 As to the court see PARA 506 note 4.

7 Prevention of Terrorism Act 2005 s 4(9). Provision in connection with proceedings on an application to the court by any person for the renewal of a derogating control order ('control order proceedings') is made by s 11(5), (6)(d), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

8 As to the meaning of 'the public' see PARA 508 note 4.

9 As to the meaning of 'terrorism' see PARA 506 note 1.

10 Prevention of Terrorism Act 2005 s 4(10)(a).

11 As to the meaning of 'designated derogation' see PARA 506 note 3.

12 Prevention of Terrorism Act 2005 s 4(10)(b). As to the right to liberty see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 127-133.

13 As to the meaning of 'derogating obligation' see PARA 506 note 3.

14 Prevention of Terrorism Act 2005 s 4(10)(c). As to the meaning of 'designation order' see PARA 506 note 3.

15 Prevention of Terrorism Act 2005 s 4(10)(d). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3. As to the obligations which may be imposed by control orders see PARA 507.

16 Prevention of Terrorism Act 2005 s 4(11). Where the court exercises its power under s 4(11) and subsequently renews the control order in question, the period of any renewal still runs from the time when the order would have ceased to have effect apart from s 4(11): s 4(12).

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519. Arrest and detention pending derogating control order.

A constable may arrest and detain an individual if:

- 1746 (1) the Secretary of State has made an application to the court¹ for a derogating control order² to be made against that individual³; and
- 1747 (2) the constable considers that the individual's arrest and detention is necessary to ensure that he is available to be given notice of the order if it is made⁴.

A constable who has so arrested an individual must take him to the designated place⁵ that the constable considers most appropriate as soon as practicable after the arrest⁶. An individual taken to a designated place may be detained there until the end of 48 hours from the time of his arrest⁷. If the court considers that it is necessary to do so to ensure that the individual in question is available to be given notice of any derogating control order that is made against him, it may, during the 48 hours following his arrest, extend the period for which the individual may be detained⁸ by a period of no more than 48 hours⁹. An individual may not be detained at any time after he has become bound by a derogating control order made against him on the Secretary of State's application, or after the court has dismissed the application¹⁰.

An individual detained¹¹ is deemed to be in legal custody throughout the period of his detention¹² and after having been taken to a designated place is deemed, in England and Wales, to be in police detention¹³.

The power to detain an individual¹⁴ includes power to detain him in a manner that is incompatible with his right to liberty under the European Convention on Human Rights¹⁵ if, and only if, there is a designated derogation¹⁶ in respect of the detention of individuals in connection with the making of applications for derogating control orders, and that derogation and the designated derogation relating to the power to make the orders applied for are designated in respect of the same public emergency¹⁷.

1 As to the court see PARA 506 note 4.

2 As to the meaning of 'derogating control order' see PARA 514.

3 Prevention of Terrorism Act 2005 s 5(1)(a). Provision in connection with the arrest or detention of a person under s 5 ('control order proceedings') is made by s 11(5), (6)(i), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

4 Prevention of Terrorism Act 2005 s 5(1)(b). A person who has the powers of a constable in one part of the United Kingdom may exercise the power of arrest under s 5 in that part of the United Kingdom or in any other part of the United Kingdom: s 5(6).

5 For these purposes, 'designated place' means any place which the Secretary of State has designated under the Terrorism Act 2000 Sch 8 para 1(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 421) as a place at which persons may be detained under s 41: Prevention of Terrorism Act 2005 s 5(10).

6 Prevention of Terrorism Act 2005 s 5(2).

7 Prevention of Terrorism Act 2005 s 5(3).

8 le detained under the Prevention of Terrorism Act 2005 s 5.

9 Prevention of Terrorism Act 2005 s 5(4). Provision in connection with proceedings on an application to extend the detention of a person under s 5 ('control order proceedings') is made by s 11(5), (6)(e), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016).

10 Prevention of Terrorism Act 2005 s 5(5).

11 le detained under the Prevention of Terrorism Act 2005 s 5.

12 Prevention of Terrorism Act 2005 s 5(7)(a).

13 Prevention of Terrorism Act 2005 s 5(7)(b). The reference to police detention is a reference to police detention for the purposes of the Police and Criminal Evidence Act 1984 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 938 et seq). The Prevention of Terrorism Act 2005 s 5(7)(b) is subject to s 5(8), which provides that the Terrorism Act 2000 Sch 8 paras 1(6), 2, 6-9 (powers and safeguards in the case of persons detained under s 41: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 421) apply, with specified modifications, to an individual detained under the Prevention of Terrorism Act 2005 s 5 as they apply to a person detained under the Terrorism Act 2000 s 41.

14 le under the Prevention of Terrorism Act 2005 s 5.

15 As to the right to liberty see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 5; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 127-133.

16 As to the meaning of 'designated derogation' see PARA 506 note 3.

17 Prevention of Terrorism Act 2005 s 5(9).

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520. Revocation and modification of derogating control orders.

An application may be made at any time to the court¹ by the Secretary of State, or by the controlled person², for the revocation of a derogating control order³ or for the modification of obligations imposed by such an order⁴. On such an application, the court may modify the obligations imposed by the derogating control order only where:

- 1748 (1) the modification⁵ consists in the removal or relaxation of an obligation imposed by the order⁶;
- 1749 (2) the modification has been agreed to by both the controlled person and the Secretary of State⁷; or
- 1750 (3) the modification is one which the court considers necessary for purposes connected with preventing or restricting involvement by the controlled person in terrorism-related activity⁸.

The court may not, by any modification of the obligations imposed by a derogating control order, impose any derogating obligation⁹ unless it considers that the modification is necessary for purposes connected with protecting members of the public¹⁰ from a risk of terrorism¹¹, and it appears to the court that the risk is one arising out of, or is associated with, the public emergency in respect of which the designated derogation¹² in question has effect¹³. If the court at any time determines that a derogating control order needs to be modified so that it no longer imposes derogating obligations, it must revoke the order¹⁴.

1 As to the court see PARA 506 note 4.

2 As to the meaning of 'controlled person' see PARA 506 note 1.

3 As to the meaning of 'derogating control order' see PARA 514.

4 Prevention of Terrorism Act 2005 s 7(4). As to the court's powers of revocation and modification see s 15(3); and PARA 512 note 5. Provision in connection with proceedings on an application to the court by any person for the modification or revocation of a derogating control order ('control order proceedings') is made by s 11(5), (6)(d), (j), Sch 6 (Sch 6 amended by the Counter-Terrorism Act 2008 s 81, Sch 9 Pt 5; and by SI 2006/1016). The revocation or modification of a control order may be proved by the production of a document purporting to be certified by the Secretary of State or the court as a true copy of the instrument of revocation or modification, although this does not prevent the proof of the revocation or modification of such an order in other ways: Prevention of Terrorism Act 2005 s 7(11)(b).

5 As to the meaning of 'modification' see PARA 512 note 3. As to the obligations which may be imposed by control orders see PARA 507.

6 Prevention of Terrorism Act 2005 s 7(5)(a).

7 Prevention of Terrorism Act 2005 s 7(5)(b).

8 Prevention of Terrorism Act 2005 s 7(5)(c). As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3. The controlled person (see PARA 506 note 1) is bound by the modification of a control order by virtue of s 7(5)(c) only if a notice setting out the terms of the modification has been delivered to him in person: s 7(8)(c). As to the delivery of a notice under s 7(8) see s 7(9); and PARA 506 note 1.

9 As to the meaning of 'derogating obligation' see PARA 506 note 3.

- 10 As to the meaning of 'the public' see PARA 508 note 4.
- 11 As to the meaning of 'terrorism' see PARA 506 note 1.
- 12 As to the meaning of 'designated derogation' see PARA 506 note 3.
- 13 Prevention of Terrorism Act 2005 s 7(6).
- 14 Prevention of Terrorism Act 2005 s 7(7).

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D. POWERS IN RELATION TO CONTROLLED PERSONS

521. Criminal investigations.

Where it appears to the Secretary of State:

- 1751 (1) that the involvement in terrorism-related activity¹ of which an individual is suspected may have involved the commission of an offence relating to terrorism²; and
- 1752 (2) that the commission of that offence is being or would fall to be investigated by a police force³,

then:

- 1753 (a) before making, or applying for the making of, a control order⁴ against the individual, the Secretary of State must consult the chief officer⁵ of the police force about whether there is evidence available that could realistically be used for the purposes of a prosecution of the individual for an offence relating to terrorism⁶; and
- 1754 (b) if a control order is made against the individual⁷, it is the duty of the chief officer to secure that the investigation of the individual's conduct with a view to his prosecution for an offence relating to terrorism is kept under review throughout the period during which the control order has effect⁸.

1 As to the meaning of 'involvement in a terrorism-related activity' see PARA 507 note 3.

2 Prevention of Terrorism Act 2005 s 8(1)(a). As to the meaning of 'terrorism' see PARA 506 note 1.

3 Prevention of Terrorism Act 2005 s 8(1)(b). By virtue of s 8(7) (amended by SI 2007/1098) 'police force' means:

820 (1) a police force maintained for a police area in England and Wales;

821 (2) a police force maintained under the Police (Scotland) Act 1967;

822 (3) the Police Service of Northern Ireland;

823 (4) the Serious Organised Crime Agency; or

824 (5) the Scottish Crime and Drug Enforcement Agency.

4 As to the meaning of 'control order' see PARA 506.

5 By virtue of the Prevention of Terrorism Act 2005 s 8(7) (amended by SI 2007/1098) 'chief officer':

825 (1) in relation to a police force maintained for a police area in England and Wales, means the chief officer of police of that force;

826 (2) in relation to a police force maintained under the Police (Scotland) Act 1967, means the chief constable of that force;

827 (3) in relation to the Police Service of Northern Ireland, means the Chief Constable of that Service;

828 (4) in relation to the Serious Organised Crime Agency, means the Director General of that Agency; and

829 (5) in relation to the Scottish Crime and Drug Enforcement Agency, means the Director of that Agency.

In carrying out his functions under the Prevention of Terrorism Act 2005 s 8 the chief officer must consult the relevant prosecuting authority but only, in the case of the performance of his duty under s 8(4) to keep the investigation under review (see the text and notes 7-8), to the extent that he considers it appropriate to do so: s 8(5). The requirements of s 8(5) may be satisfied by consultation that took place wholly or partly before the passing of the Prevention of Terrorism Act 2005: s 8(6). By virtue of s 8(7) 'relevant prosecuting authority':

830 (a) in relation to offences that would be likely to be prosecuted in England and Wales, means the Director of Public Prosecutions;

831 (b) in relation to offences that would be likely to be prosecuted in Scotland, means the appropriate procurator fiscal;

832 (c) in relation to offences that would be likely to be prosecuted in Northern Ireland, means the Director of Public Prosecutions for Northern Ireland.

6 Prevention of Terrorism Act 2005 s 8(2).

7 The Secretary of State must inform the chief officer of the police force that the control order has been made and that the duty under s 8(4) applies: s 8(3).

8 Prevention of Terrorism Act 2005 s 8(4).

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522. Monitoring of compliance.

A constable may, for the purposes of determining whether the controlled person¹ is complying with the obligations imposed by or under a control order², apply³ for the issue of a warrant authorising any constable to enter (if necessary by force) and search premises⁴ that are specified in the warrant⁵.

A person is guilty of an offence if he intentionally obstructs the exercise by a constable of a power conferred by a warrant under these provisions⁶.

1 As to the meaning of 'controlled person' see PARA 506 note 1.

2 Prevention of Terrorism Act 2005 s 7C(1) (ss 7C, 9(3A) added, s 9(7)(a) amended, by the Counter-Terrorism Act 2008 s 78(1), (2)). As to the meaning of 'control order' see PARA 506. As to the obligations which may be imposed by control orders see PARA 507.

3 Ie to a justice of the peace: Prevention of Terrorism Act 2005 s 7C(2)(a) (as added: see note 2).

4 As to the meaning of 'premises' see PARA 506 note 1. The premises to which these provisions apply are:

833 (1) the controlled person's place of residence (Prevention of Terrorism Act 2005 s 7C(4)(a) (as added: see note 2));

834 (2) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order (s 7C(4)(b) (as so added)); and

835 (3) any premises to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order and with which there is reason to believe that the controlled person is or was recently connected (s 7C(4)(c) (as so added)).

5 Prevention of Terrorism Act 2005 s 7C(3) (as added: see note 2). An application for a warrant under these provisions may only be granted if the justice of the peace is satisfied that the issue of the warrant is necessary for the purposes of determining whether the controlled person is complying with the obligations imposed by or under the control order: s 7C(5) (as so added).

6 Prevention of Terrorism Act 2005 s 9(3A) (as added: see note 2). A person guilty of an offence under s 9(3A) is liable on summary conviction in England and Wales, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: s 9(7)(a) (as so amended). In relation to an offence committed after the commencement of the Criminal Justice Act 2003 s 281(5) (not yet in force), the reference to six months is to be read as a reference to 51 weeks: see the Prevention of Terrorism Act 2005 s 9(8). As to the standard scale see PARA 142.

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523. Failure to report as required by a control order.

A person who, without reasonable excuse, contravenes¹ an obligation imposed on him by a control order² is guilty of an offence³.

A person is also guilty of an offence if:

- 1755 (1) a control order by which he is bound at a time when he leaves the United Kingdom⁴ requires him, whenever he enters the United Kingdom, to report to a specified person⁵ that he is or has been the subject of such an order⁶;
- 1756 (2) he re-enters the United Kingdom after the order has ceased to have effect⁷;
- 1757 (3) the occasion on which he re-enters the United Kingdom is the first occasion on which he does so after leaving while the order was in force⁸; and
- 1758 (4) on that occasion he fails, without reasonable excuse, to report to the specified person in the manner that was required by the order⁹.

1 'Contravene' includes fail to comply; and cognate expressions are to be construed accordingly: Prevention of Terrorism Act 2005 s 15(1).

2 As to the meaning of 'control order' see PARA 506. As to the obligations which may be imposed by control orders see PARA 507.

3 Prevention of Terrorism Act 2005 s 9(1). A person who is guilty of an offence under s 9(1) or (2) is liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine or to both, or on summary conviction in England and Wales to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both: s 9(4)(a), (b). In relation to an offence committed after the commencement of the Criminal Justice Act 2003 s 154(1) (not yet in force), the reference to six months is to be read as a reference to 12 months: see the Prevention of Terrorism Act 2005 s 9(5). As to the statutory maximum see PARA 140. Where a person is convicted of an offence under s 9(1) or (2) it is not open to the court, in respect of that offence, to make an order of conditional discharge under the Powers of Criminal Courts (Sentencing) Act 2000 s 12(1)(b) (see PARA 40): Prevention of Terrorism Act 2005 s 9(6)(a). As to the effect of the court's decisions under s 9(1), (2) on convictions see PARA 524.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 Is a person specified in the control order or falling within a description so specified: Prevention of Terrorism Act 2005 s 15(1). As to the meaning of 'specified' see PARA 507 note 19.

6 Prevention of Terrorism Act 2005 s 9(2)(a). As to punishment see note 3.

7 Prevention of Terrorism Act 2005 s 9(2)(b). See note 3.

8 Prevention of Terrorism Act 2005 s 9(2)(c). See note 3.

9 Prevention of Terrorism Act 2005 s 9(2)(d). See note 3.

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524. Effect of court's decisions on convictions.

Where:

- 1759 (1) a control order¹, a renewal of a control order or an obligation imposed by a control order² is quashed by the court³ in control order proceedings⁴, or on an appeal from a determination in such proceedings⁵; and
- 1760 (2) before it was quashed a person had been convicted⁶ of an offence of contravening a control order or of failing to report as required by such an order of which he could not have been convicted had the order, renewal or (as the case may be) obligation been quashed before the proceedings for the offence were brought⁷,

a person so convicted in England and Wales may appeal against the conviction⁸. In the case of a conviction on indictment, the appeal lies to the Court of Appeal; and in the case of a summary conviction, the appeal lies to the Crown Court⁹.

On an appeal under these provisions to any court, that court must allow the appeal and quash the conviction¹⁰.

1 As to the meaning of 'control order' see PARA 506.

2 As to the obligations which may be imposed by control orders see PARA 507.

3 As to the court see PARA 506 note 4.

4 As to control order proceedings see the Prevention of Terrorism Act 2005 s 11(6); and PARA 506 et seq.

5 Prevention of Terrorism Act 2005 s 12(1)(a).

6 ie by virtue of the Prevention of Terrorism Act 2005 s 9(1) or s 9(2): see PARA 523.

7 Prevention of Terrorism Act 2005 s 12(1)(b).

8 Prevention of Terrorism Act 2005 s 12(2).

9 Prevention of Terrorism Act 2005 s 12(2)(a), (c). An appeal under s 12 to the Court of Appeal against a conviction on indictment: (1) may be brought irrespective of whether the appellant has previously appealed against his conviction (s 12(4)(a)); (2) may not be brought more than 28 days after the date of the quashing of the order, renewal or obligation (s 12(4)(b)); and (3) is to be treated as an appeal under the Criminal Appeal Act 1968 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1848), but does not require leave (Prevention of Terrorism Act 2005 s 12(4)(c)).

An appeal under s 12 to the Crown Court against a summary conviction: (a) may be brought irrespective of whether the appellant pleaded guilty (s 12(7)(a)); (b) may be brought irrespective of whether he has previously appealed against his conviction or made an application in respect of the conviction under the Magistrates' Courts Act 1980 s 111 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 885 et seq) (Prevention of Terrorism Act 2005 s 12(7)(b)); (c) may not be brought more than 21 days after the date of the quashing of the order, renewal or obligation (s 12(7)(c)); and (d) is to be treated as an appeal under s 108(1)(b) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1980) (Prevention of Terrorism Act 2005 s 12(7)(d)).

10 Prevention of Terrorism Act 2005 s 12(3).

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525. Controlled person absconds.

If a constable reasonably suspects that the controlled person¹ has absconded, the constable may enter (if necessary by force) and search premises²:

- 1761 (1) for the purpose of determining whether the person has absconded³; and
- 1762 (2) if it appears that the person has absconded, for material that may assist in the pursuit and arrest of the controlled person⁴.

A person is guilty of an offence if he intentionally obstructs the exercise by a constable of a power conferred by these provisions⁵.

1 As to the meaning of 'controlled person' see PARA 506 note 1.

2 As to the meaning of 'premises' see PARA 506 note 1. The premises to which these provisions apply are:

836 (1) the controlled person's place of residence (Prevention of Terrorism Act 2005 s 7A(2)(a) (ss 7A, 9(3A) added, s 9(7)(a) amended, by the Counter-Terrorism Act 2008 s 78(1), (2));

837 (2) other premises to which the controlled person is required to grant access in accordance with an obligation imposed by or under the control order (Prevention of Terrorism Act 2005 s 7A(2)(b) (as so added)); and

838 (3) any premises to which the controlled person has previously been required to grant access in accordance with an obligation imposed by or under a control order and with which there is reason to believe that the controlled person is or was recently connected (s 7A(2)(c) (as so added)).

As to the meaning of 'control order' see PARA 506. As to the obligations which may be imposed by control orders see PARA 507.

3 Prevention of Terrorism Act 2005 s 7A(1)(a) (as added: see note 2).

4 Prevention of Terrorism Act 2005 s 7A(1)(b) (as added: see note 2).

5 Prevention of Terrorism Act 2005 s 9(3A) (as added: see note 2). A person guilty of an offence under s 9(3A) is liable on summary conviction in England and Wales, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: s 9(7)(a) (as so amended). In relation to an offence committed after the commencement of the Criminal Justice Act 2003 s 281(5) (not yet in force), the reference to six months is to be read as a reference to 51 weeks: see the Prevention of Terrorism Act 2005 s 9(8). As to the standard scale see PARA 142.

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(iii) Drinking Banning Orders Made Otherwise than on Conviction

526. Making of banning order by complaint to magistrates' court.

An application by complaint to a magistrates' court for the making of a drinking banning order¹ against an individual may be made by a relevant authority² if the individual is aged 16 or over³ and it appears to the authority:

- 1763 (1) that the individual has after 31 August 2009⁴ engaged in criminal or disorderly conduct while under the influence of alcohol⁵; and
- 1764 (2) that such an order is necessary to protect other persons from further conduct by him of that kind while he is under the influence of alcohol⁶.

If on such an application with respect to an individual it is proved that these conditions are satisfied in his case, the magistrates' court may make a drinking banning order against him⁷.

An appeal lies to the Crown Court against the making by a magistrates' court of a drinking banning order⁸. Provision is also made in connection with the commencement and duration of drinking banning orders⁹, the making of interim orders¹⁰, the variation and discharge of banning orders and interim orders¹¹, the completion of approved courses by persons subject to orders¹², and the punishment of breaches of orders and interim orders¹³.

1 As to the meaning of 'drinking banning order' see PARA 319. A drinking banning order may also be made on conviction in criminal proceedings (see the Violent Crime Reduction Act 2006 s 6; and PARA 320) or without a conviction in county court proceedings (see s 4; and PARA 527): Violent Crime Reduction Act 2006 s 14(1). Nothing in s 3 (see the text and notes 2-7) affects the operation of the Magistrates' Courts Act 1980 s 127 (limitation of time in respect of informations laid or complaints made in magistrates' court: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589): Violent Crime Reduction Act 2006 s 3(6).

2 As to the meaning of 'relevant authority' see PARA 324 note 4. As to the form of an application for a drinking banning order under the Violent Crime Reduction Act 2006 s 3 see the Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 2(1), Sch 1. Before making an application under these provisions a relevant authority must consult the appropriate persons (Violent Crime Reduction Act 2006 s 3(4)), that is to say (by virtue of s 14(1)) such of the following as is not a party to the application:

- 839 (1) the chief officer of police of the police force for the police area where the conduct to which the application relates occurred;
- 840 (2) the chief officer of police of the police force for the police area in which the individual to whose conduct the application relates normally resides;
- 841 (3) every local authority in whose area the place where that individual normally resides is situated; and
- 842 (4) the Chief Constable of the British Transport Police Force.

As to the meaning of 'local authority' see PARA 324 note 4.

3 Violent Crime Reduction Act 2006 s 3(1)(b), (3).

4 I.e. the date on which the Violent Crime Reduction Act 2006 s 3 was brought into force by the Violent Crime Reduction Act 2006 (Commencement No 7) Order 2009, SI 2009/1840.

- 5 Violent Crime Reduction Act 2006 s 3(2)(a).
- 6 Violent Crime Reduction Act 2006 s 3(2)(b).
- 7 Violent Crime Reduction Act 2006 s 3(5).
- 8 Violent Crime Reduction Act 2006 s 10(1). On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal and may also make such incidental or consequential orders as appear to it to be just: s 10(2). See also s 10(3); and PARA 324.
- 9 See the Violent Crime Reduction Act 2006 ss 2, 7(7); and PARA 321.
- 10 See the Violent Crime Reduction Act 2006 s 9; and PARA 528.
- 11 See the Violent Crime Reduction Act 2006 s 5; and PARA 529.
- 12 See the Violent Crime Reduction Act 2006 ss 12, 13; and PARA 323.
- 13 See the Violent Crime Reduction Act 2006 s 11; and PARA 325.

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527. Making of banning order in county court proceedings.

If, in proceedings which have been brought in a county court, a relevant authority¹ considers that a party to those proceedings is an individual in relation to whom it would be reasonable for it to make an application² for a drinking banning order³, the authority may either:

- 1765 (1) if it is a party to the proceedings, make an application in the proceedings for a drinking banning order against the individual⁴; or
- 1766 (2) if it is not a party to the proceedings, make an application to be joined to those proceedings⁵ and (if it is joined) may apply for such an order against the individual⁶.

Also, if a relevant authority considers that an individual who is not a party to the proceedings has engaged in criminal or disorderly conduct while under the influence of alcohol⁷ and that conduct is material in relation to the proceedings⁸, the relevant authority may, if it is a party to the proceedings, make an application for the individual to be⁹ joined¹⁰ and, if that individual is so joined, apply for such an order against him¹¹.

If, on an application for such an order against an individual, it is proved that the conditions for making a drinking banning order on complaint¹² are satisfied in relation to the individual, and his criminal or disorderly conduct while under the influence of alcohol is material in relation to the proceedings, the court may make a drinking banning order against him¹³.

Provision is made in connection with the commencement and duration of drinking banning orders¹⁴, the making of interim orders¹⁵, the variation and discharge of banning orders and interim orders¹⁶, the completion of approved courses by persons subject to orders¹⁷, and the punishment of breaches of orders and interim orders¹⁸.

1 As to the meaning of 'relevant authority' see PARA 324 note 4.

2 Ie an application under the Violent Crime Reduction Act 2006 s 3: see PARA 526.

3 Violent Crime Reduction Act 2006 s 4(1), (2)(b), (3)(b). As to the meaning of 'drinking banning order' see PARA 319. A drinking banning order may also be made on conviction in criminal proceedings (see s 6; and PARA 320).

4 Violent Crime Reduction Act 2006 s 4(2)(a). A relevant authority must consult the appropriate persons (see PARA 526 note 2) before making an application for a drinking banning order under s 4(2): s 4(6)(a).

5 Ie for the purposes of the Violent Crime Reduction Act 2006 s 4. A relevant authority must consult the appropriate persons before making an application to be joined to proceedings under s 4(3): s 4(6)(b).

6 Violent Crime Reduction Act 2006 s 4(3)(a).

7 Violent Crime Reduction Act 2006 s 4(4)(a).

8 Violent Crime Reduction Act 2006 s 4(4)(b).

9 Ie for the purposes of the Violent Crime Reduction Act 2006 s 4.

- 10 Violent Crime Reduction Act 2006 s 4(5)(a). A relevant authority must consult the appropriate persons before making an application to join an individual to proceedings under s 4(5): s 4(6)(c).
- 11 Violent Crime Reduction Act 2006 s 4(5)(b).
- 12 Ie the conditions in the Violent Crime Reduction Act 2006 s 3(2): see PARA 526.
- 13 Violent Crime Reduction Act 2006 s 4(7).
- 14 See the Violent Crime Reduction Act 2006 ss 2, 7(7); and PARA 321.
- 15 See the Violent Crime Reduction Act 2006 s 9; and PARA 528.
- 16 See the Violent Crime Reduction Act 2006 s 5; and PARA 529.
- 17 See the Violent Crime Reduction Act 2006 ss 12, 13; and PARA 323.
- 18 See the Violent Crime Reduction Act 2006 s 11; and PARA 325.

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528. Interim orders.

Where an application is made for a drinking banning order¹ the court² may, before determining the application, make an interim order if it considers that it is just to do so³. An interim order may contain any provision that may be contained in a drinking banning order⁴ but has effect, unless renewed, only for such fixed period of not more than four weeks as may be specified in the order⁵.

An interim order may be renewed (on one or more occasions) for a period of not more than four weeks from the end of the period when it would otherwise cease to have effect⁶ and must cease to have effect (if it has not previously done so) on the determination of the application⁷ for the drinking banning order or the interim order⁸.

1 Violent Crime Reduction Act 2006 s 9(1)(a). As to the meaning of 'drinking banning order' see PARA 319. As to applications for drinking banning orders see PARA 526 (making of banning order by complaint to magistrates' court) and PARA 527 (making of banning order in county court proceedings).

2 As to the meaning of 'court' see PARA 320 note 5.

3 Violent Crime Reduction Act 2006 s 9(2)(a). As to the form of an application for an interim drinking banning order under s 9 see the Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 2(2), Sch 2. Where these provisions apply an application for an interim order against an individual may, with leave of the justices' clerk, be made without notice being given to that individual (Violent Crime Reduction Act 2006 s 9(3)(a); Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 3(1)), although the justices' clerk may only grant such leave if he is satisfied that it is necessary for the application to be made without notice being given to the individual in question and it is not necessary for the application to be heard in the presence of the individual (r 3(2)). If an application made under r 3(1) is granted then the interim order and the application for a drinking banning order under the Violent Crime Reduction Act 2006 s 3 (see PARA 526) (together with a summons giving a date for the individual to attend court) must be served on the individual in person as soon as practicable after the making of the interim order: Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 3(3). An interim order which is made at the hearing of an application without notice must not take effect until it has been served on the individual (r 3(4)), and if such an interim order made without notice is not served on the individual within seven days of being made it will cease to have effect (r 3(5)). Where the court refuses to make an interim order without notice being given to the individual it may direct that the application be made on notice: r 3(9). If an interim order is made without notice being given to the individual and the individual subsequently applies to the court for the order to be discharged or varied his application must not be dismissed without the opportunity for him to make oral representations to the court: r 3(10).

An application for an interim order may be heard in the absence of that individual (Violent Crime Reduction Act 2006 s 9(3)(b)), although the permission of the court (in the case of proceedings in the county court) and the permission of the proper officer (in the case of an application to a magistrates' court) is required for the making or hearing of an application in accordance with s 9(3) (s 9(4)), and such permission may only be given if the court or proper officer is satisfied that it is necessary for the application to be made without notice being given to the individual in question and that it is not necessary for the application to be heard in the presence of the individual (s 9(5)).

Subject to the Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 3(3) (see above) any summons, copy of an order or application required to be sent under those rules to an individual who is the subject of that summons, order or application must be either given to that individual in person or sent by post to the last known address of that individual, and if so given or sent, is deemed to have been received by that individual unless proved otherwise: r 5(1). Any summons, copy of an order or application required to be sent under those rules to an individual who is the subject of that summons, order or application must also be sent by the designated officer to the authority which made the application and to any relevant authority whom the applicant is required by the Violent Crime Reduction Act 2006 s 3 to have consulted before making the application and, where appropriate, must invite them to make observations and advise them of their right to be heard at the hearing: Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 5(2).

4 Violent Crime Reduction Act 2006 s 9(6)(a).

5 Violent Crime Reduction Act 2006 s 9(6)(b); Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 3(6).

6 Violent Crime Reduction Act 2006 s 9(7)(a); Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 3(7).

7 le under the Violent Crime Reduction Act 2006 s 3 (application for drinking banning order: see PARA 526) or s 9(1)(a) (application for interim order: see the text and note 1).

8 Violent Crime Reduction Act 2006 s 9(7)(b); Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 3(8).

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529. Variation or discharge of banning orders and interim orders.

If a drinking banning order¹ has been made by complaint to a magistrates' court² or in county court proceedings³, or if an interim order has been made⁴, the subject of the order and, where applicable, the relevant authority⁵ on whose application the order was made, may apply by complaint to the court which made the order⁶ for it to be varied or discharged by a further order⁷. A drinking banning order (but not an interim order) may not be varied so as to extend the specified period⁸ to more than two years⁹, and the order may not be discharged unless it is discharged from a time after the end of the period that is half the duration of the specified period¹⁰ or the relevant authority on whose application the order was made has consented to its earlier discharge¹¹.

1 As to the meaning of 'drinking banning order' see PARA 319. A drinking banning order may also be made on conviction in criminal proceedings (see s 6; and PARA 320).

2 Ie under the Violent Crime Reduction Act 2006 s 3: see PARA 526.

3 Ie under the Violent Crime Reduction Act 2006 s 4: see PARA 527.

4 Violent Crime Reduction Act 2006 s 9(8). As to interim orders see PARA 528.

5 As to the meaning of 'relevant authority' see PARA 324 note 4.

6 In the case of an order under the Violent Crime Reduction Act 2006 s 3 made by a magistrates' court, this reference to the court which made the order includes a reference to a relevant local court: s 5(3). As to the meaning of 'relevant local court' see PARA 323 note 9. An order of the Crown Court made on an appeal under s 10 (see PARA 526) (other than one directing that an application be re-heard by a magistrates' court) is treated for the purposes of s 5 as an order of the magistrates' court from which the appeal was brought: s 10(3).

An application for the variation or discharge of an order made under s 3 or for the variation or discharge of an order made under s 9 must be made by way of complaint to the magistrates' court which made the order or to any magistrates' court acting for the local justice area in which the subject of the order normally resides and must specify the reason why the applicant for variation or discharge believes the court should vary or discharge the order, as the case may be: Magistrates' Courts (Drinking Banning Orders) Rules 2009, SI 2009/2937, r 4(1), (2). Subject to r 3(10) (see PARA 528 note 3), where the court considers that there are no grounds upon which it might conclude that the order should be varied or discharged it may determine the application without hearing representations from the applicant for variation or discharge or from any other person (r 4(3)); where the court considers that there are grounds upon which it might conclude that the order should be varied or discharged then, unless the application is withdrawn, a summons (see PARA 528 note 3) must be issued to the subject of the order or the relevant authority on whose application the order was made, as appropriate, giving not less than 14 days' notice in writing of the date, time and place appointed for the hearing (r 4(4)). The designated officer must send with the summons under r 4(4) a copy of the application for variation or discharge of the drinking banning order: r 4(5).

7 Violent Crime Reduction Act 2006 s 5(1), (2), (4).

8 As to the specified period see PARA 321.

9 Violent Crime Reduction Act 2006 s 5(5).

10 Violent Crime Reduction Act 2006 s 5(6)(a).

11 Violent Crime Reduction Act 2006 s 5(6)(b).

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(iv) Football Banning Orders Made Otherwise than on Conviction

530. Making of banning order on complaint.

An application for a football banning order¹ in respect of any person may be made by complaint to a magistrates' court² by the relevant chief officer³, the Director of Public Prosecutions⁴ or, where applicable, a constable⁵, if it appears to him that the respondent has at any time caused or contributed to any violence or disorder⁶ in the United Kingdom or elsewhere⁷, and the court must make a banning order in respect of the respondent if:

- 1767 (1) it is proved on the application that that condition⁸ is met⁹; and
- 1768 (2) the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches¹⁰.

An appeal lies to the Crown Court against the making by a magistrates' court of a banning order under these provisions¹¹ and against the dismissal by a magistrates' court of an application for the making of a banning order under these provisions¹².

1 As to the meaning of 'football banning order' see PARA 326. A football banning order may also be made on conviction in criminal proceedings (see the Football Spectators Act 1989 s 14A; and PARA 328). The restraints imposed by a football banning order under these provisions are not in themselves unlawful under EC Council Directive 73/148 (OJ L172, 20.6.73, p 14) on the abolition of restrictions on movement and residence within the Community for nationals of member states with regard to establishment and the provision of services: see *Gough v Chief Constable of Derbyshire* [2002] EWCA Civ 351, [2002] QB 1213, [2002] 2 All ER 985.

2 Football Spectators Act 1989 s 14B(3) (ss 14B-14D, 21B added by the Football (Disorder) Act 2000 Sch 1 paras 1, 2, 4). If the magistrates' court adjourns proceedings on an application under the Football Spectators Act 1989 s 14B the court may remand the person in respect of whom the application is made: s 14B(5) (as so added; s 14B(1) substituted, s 14B(1A), (5), (6) added, by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 2(3), 4). A person who, by virtue of the Football Spectators Act 1989 s 14B(5) is remanded on bail under the Magistrates' Courts Act 1980 s 128 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 716) may be required by the conditions of his bail:

- 843 (1) not to leave England and Wales before his appearance before the court (Football Spectators Act 1989 s 14B(6)(a) (as so added)); and
- 844 (2) if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his passport to a police constable, if he has not already done so (s 14B(6)(b) (as so added)).

As to the meaning of 'regulated football match' see PARA 326 and as to the meaning of 'football match' see PARA 326 note 5. As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Football Spectators Act 1989 s 14B(1)(a) (as added and substituted: see note 2)). 'Relevant chief officer' means the chief officer of police of any police force maintained for a police area or the chief constable of the British Transport Police Force (s 14B(1A) (as so added)), except where a notice given by a constable under s 21B (see PARA 531) is treated as an application for a banning order made by complaint by the constable to the court in question (see the text and note 5), in which event references to the relevant chief officer should be read as references to that constable (s 21B(4) (as so added; amended by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 4)).

4 Football Spectators Act 1989 s 14B(1)(b) (as added and substituted: see note 2).

5 A notice given in connection with a football banning orders by a constable under the Football Spectators Act 1989 s 21B (see PARA 531) is treated as an application for a banning order made by complaint by the constable to the court in question: s 21B(4) (as added: see note 2).

6 As to the meanings of 'violence' and 'disorder' see PARA 327 note 4.

7 Football Spectators Act 1989 s 14B(2) (as added: see note 2).

8 le the condition referred to in the Football Spectators Act 1989 s 14B(2): see the text and notes 5-7.

9 Football Spectators Act 1989 s 14B(4)(a) (as added: see note 2). The magistrates' court may take into account the following matters (among others), so far as they consider it appropriate to do so, in determining whether to make an order under s 14B:

845 (1) any decision of a court or tribunal outside the United Kingdom (s 14C(4)(a) (as so added));

846 (2) deportation or exclusion from a country outside the United Kingdom (s 14C(4)(b) (as so added));

847 (3) removal or exclusion from premises used for playing football matches, whether in the United Kingdom or elsewhere (s 14C(4)(c) (as so added)); and

848 (4) conduct recorded on video or by any other means (s 14C(4)(d) (as so added)).

In determining whether to make such an order:

849 (a) the magistrates' court may not take into account anything done by the respondent before the beginning of the period of ten years ending with the application under s 14B(1), except circumstances ancillary to a conviction (s 14C(5)(a) (as so added)); and

850 (b) before taking into account any conviction for a relevant offence, where a court made a statement under s 14A(3) (see PARA 328) (or s 15(2A) (repealed) or the Public Order Act 1986 s 30(3) (repealed)), the magistrates' court must consider the reasons given in the statement (Football Spectators Act 1989 s 14C(5)(b) (as so added)).

As to the meaning of 'circumstances ancillary to a conviction' see the Rehabilitation of Offenders Act 1974 s 4 (effect of rehabilitation); and PARA 663 note 10 (definition applied by the Football Spectators Act 1989 s 14C(5) (as so added)). Section 14C(5) does not prejudice anything in the Rehabilitation of Offenders Act 1974: Football Spectators Act 1989 s 14C(6) (as so added).

Although proceedings under s 14B are civil proceedings rather than criminal proceedings, the serious nature of the restraints on individual freedoms imposed by banning orders requires the application of an exacting standard of proof comparable to the criminal standard: see *Gough v Chief Constable of Derbyshire* [2002] EWCA Civ 351, [2002] QB 1213, [2002] 2 All ER 985.

Where a court makes a banning order the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court) must:

851 (i) give a copy of it to the person to whom it relates (Football Spectators Act 1989 s 18(1)(a) (s 18(1) amended by the Football (Disorder) Act 2000 Sch 2 paras 9, 10, 14; and by the Courts Act 2003 Sch 8 para 333));

852 (ii) (as soon as reasonably practicable) send a copy of it to the enforcing authority and to any prescribed person (Football Spectators Act 1989 s 18(1)(b) (as so amended));

853 (iii) as soon as reasonably practicable send a copy of it to the police station (addressed to the officer responsible for the police station) at which the person subject to the order is to report initially (s 18(1)(c) (as so amended)); and

854 (iv) in a case where the person subject to the order is detained in legal custody, as soon as reasonably practicable send a copy of it to the person in whose custody he is detained (s 18(1)(d) (as so amended)).

As to the meaning of 'enforcing authority' see PARA 328 note 3.

10 Football Spectators Act 1989 s 14B(4)(b) (as added: see note 2). See note 9. See also *R (on the application of White) v Blackfriars CC* [2008] EWHC 510 (Admin), [2008] 2 Cr App Rep (S) 542, [2008] Crim LR 575 (distinguishing the Football Spectators Act 1989 s 14B from s 14A); and PARA 328 note 5.

11 Football Spectators Act 1989 s 14D(1) (as added: see note 2). On an appeal under s 14D the Crown Court may make any orders necessary to give effect to its determination of the appeal and may also make any incidental or consequential orders which appear to it to be just: s 14D(2) (as so added; s 14D(1A) further added, s 14D(2) amended, by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 3). An order of the Crown Court made on an appeal under the Football Spectators Act 1989 s 14D (other than one directing that an application be re-heard by a magistrates' court) is to be treated for the purposes of Pt II (ss 14-22A: see PARAS 326-331, 530, 532, 533) as if it were an order of the magistrates' court from which the appeal was brought: s 14D(3) (as so added).

12 Football Spectators Act 1989 s 14D(1A) (as added: see notes 2, 11).

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531. Making of banning order by constable.

During any control period in relation to a regulated football match outside England and Wales (or, as from a day to be appointed, the United Kingdom)¹ or an external tournament², a constable in uniform who:

- 1769 (1) has reasonable grounds for suspecting that a British citizen³ present before him has at any time caused or contributed to any violence or disorder⁴ in the United Kingdom⁵ or elsewhere⁶; and
- 1770 (2) has reasonable grounds to believe that making a football banning order⁷ in his case would help to prevent violence or disorder at or in connection with any regulated football matches⁸,

may⁹ give the person a notice in writing¹⁰ requiring him:

- 1771 (a) to appear before a magistrates' court at a time, or between the times, specified in the notice¹¹;
- 1772 (b) not to leave England and Wales before that time (or the later of those times)¹²; and
- 1773 (c) if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his travel authorisation to the constable¹³,

and may detain the person in his custody (whether there or elsewhere) until he has decided whether or not to issue a notice¹⁴. Failure to comply with a notice is an offence¹⁵.

Where a person to whom a notice has been given under these provisions appears before a magistrates' court and the court refuses the application for a banning order in respect of him, it may order compensation to be paid to him out of central funds¹⁶.

1 As from a day to be appointed the Football Spectators Act 1989 s 21A(1) is amended by the Policing and Crime Act 2009 s 103(1), (2)(c) so as to refer to regulated football matches throughout the United Kingdom. At the date at which this volume states the law no day had been appointed for the coming into force of these amendments. As to the meaning of 'control period' in relation to a regulated football match outside England and Wales (or, as from a day to be appointed, the United Kingdom) see PARA 328 note 6. As to the meaning of 'regulated football match' see PARA 326 and as to the meaning of 'football match' see PARA 326 note 5.

2 As to the meaning of 'external tournament' see PARA 328 note 6.

3 The powers conferred by the Football Spectators Act 1989 ss 21A, 21B may only be exercised in relation to a person who is a British citizen: s 21C(1) (ss 14B, 21A-21D added by the Football (Disorder) Act 2000 Sch 1 paras 1, 2, 4). As to British citizenship see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 23-43.

4 As to the meanings of 'violence' and 'disorder' see PARA 327 note 4.

5 As to the meaning of 'United Kingdom' see PARA 9 note 2.

6 Football Spectators Act 1989 ss 14B(2), 21A(1)(a) (as added and (in the case of s 21A) prospectively amended): see notes 1, 3).

7 As to the meaning of 'football banning order' see PARA 326.

8 Football Spectators Act 1989 s 21A(1)(b) (as added and (in the case of s 21A) prospectively amended): see notes 1, 3).

9 ie if authorised to do so by an officer of at least the rank of inspector: Football Spectators Act 1989 s 21B(1) (as added: see note 3).

10 The notice is treated for the purposes of the Football Spectators Act 1989 s 14B (see PARA 530) as an application for a banning order made by complaint by the constable to the court in question (s 21B(4) (as added: see note 3)) and must state the grounds referred to in s 21A(1) (see the text and notes 1-8) (s 21B(2) (as so added)). A constable may arrest a person to whom he is giving such a notice if he has reasonable grounds to believe that it is necessary to do so in order to secure that the person complies with the notice: s 21B(5) (as so added).

11 Football Spectators Act 1989 s 21B(2)(a) (as added: see note 3). The times for appearance before the magistrates' court must be within the period of 24 hours beginning with the giving of the notice or the person's detention under s 21A(2) (see the text and note 15), whichever is the earlier: s 21B(3) (as so added). Where a person to whom a notice has been given under s 21B above appears before a magistrates' court as required by the notice (whether under arrest or not), the court may remand him: s 21C(3) (as so added). A person who, by virtue of s 21C(3), is remanded on bail under the Magistrates' Courts Act 1980 s 128 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 716) may be required by the conditions of his bail not to leave England and Wales before his appearance before the court and, if the control period relates to a regulated football match outside the United Kingdom or to an external tournament which includes such matches, to surrender his travel authorisation to a police constable, if he has not already done so: Football Spectators Act 1989 s 21C(4) (as so added; Football Spectators Act 1989 ss 21B(2)(c), (6), 21C(4) by the Identity Cards Act 2006 s 39(1)).

12 Football Spectators Act 1989 s 21B(2)(b) (as added: see note 3).

13 Football Spectators Act 1989 s 21B(2)(c) (as added and amended: see notes 2, 11). Any travel authorisation surrendered by a person under s 21B must be returned to him in accordance with directions given by the court: s 21B(6) (as so added and amended).

14 Football Spectators Act 1989 s 21A(2) (as added: see note 3). This power is without prejudice to any power of the constable apart from s 21A to arrest the person: s 21A(2) (as so added). The constable must give the person his reasons for detaining him in writing: s 21A(2) (as so added).

A person may not be detained under s 21A(2) for more than four hours or, with the authority of an officer of at least the rank of inspector, six hours: s 21A(3) (as so added). A person who has been detained under s 21A(2) may only be further detained thereunder in the same control period in reliance on information which was not available to the constable who previously detained him; and a person on whom a notice has been served under s 21B(2) (see the text and notes 9-14) may not be detained under s 21A(2) in the same control period: s 21A(4) (as so added).

15 Football Spectators Act 1989 s 21C(2) (as added: see note 3). A person guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both: s 21C(2) (as so added). As to the standard scale see PARA 142.

16 Football Spectators Act 1989 s 21D(1) (as added: see note 3). 'Central funds' has the same meaning as in enactments providing for the payment of costs: s 21D(5) (as so added). Before ordering the payment of compensation the court must be satisfied:

855 (1) that the notice should not have been given (s 21D(1)(a) (as so added));

856 (2) that he has suffered loss as a result of the giving of the notice (s 21D(1)(b) (as so added));
and

857 (3) that, having regard to all the circumstances, it is appropriate to order the payment of compensation in respect of that loss (s 21D(1)(c) (as so added)).

An appeal lies to the Crown Court against any refusal by a magistrates' court to order the payment of compensation under s 21D(1): s 21D(2) (as so added). The compensation to be paid by order of the magistrates' court under s 21D(1) or by order of the Crown Court on an appeal under s 21D(2) must not exceed £5,000 (but no appeal may be made under s 21D(2) in respect of the amount of compensation awarded): s 21D(3) (as so added). If it appears to the Secretary of State that there has been a change in the value of money since 28 August 2000 (ie the date on which these provisions were brought into force by the Football (Disorder) Act 2000 (Commencement) Order 2000, SI 2000/2125) or, as the case may be, the last occasion when the power conferred by the Football Spectators Act 1989 s 21D was exercised, he may by order substitute for the

amount specified in s 21D(3) such other amount as appears to him to be justified by the change: s 21D(4) (as so added). At the date at which this volume states the law no such order had been made.

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532. Requirements of banning order.

A football banning order made on complaint¹ must:

- 1774 (1) require the person subject to the order to report initially at a police station in England and Wales specified in the order within five days beginning with the day upon which the order is made²;
- 1775 (2) require the person subject to the order to give notification of specified events to the enforcing authority³; and
- 1776 (3) impose a requirement as to the surrender⁴, in connection with regulated football matches⁵ outside the United Kingdom⁶, of the passport of the person subject to the order⁷.

A banning order may also, if the court making the order thinks fit, impose additional requirements on the person subject to the order in relation to any regulated football matches⁸ and the court by which a banning order was made may, on an application⁹, vary the order so as to impose, replace or omit any such requirements¹⁰.

A person subject to a banning order who fails to comply with any requirement imposed by the order is guilty of an offence¹¹, although there is provision for exemption from certain requirements to be granted in some circumstances¹².

1 As to the meaning of 'football banning order' see PARA 326; as to the making of banning orders on complaint see PARA 530. See also *Gough v Chief Constable of Derbyshire* [2002] EWCA Civ 351, [2002] QB 1213, [2002] 2 All ER 985; and PARA 530.

2 Football Spectators Act 1989 s 14E(2) (ss 14E, 14G, 14J added by the Football (Disorder) Act 2000 Sch 1 paras 1, 2). On making the order in relation to the offender the court must explain its effect to him in ordinary language: Football Spectators Act 1989 s 14E(1) (as so added). See further ss 14E(5)-(7), 18(3), (5); and PARA 329 note 2. As to the functions of the officer responsible for the police station to which a person subject to a football banning order reports see ss 19, 21; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 124.

3 Football Spectators Act 1989 s 14E(2A) (as added (see note 2); s 14E(2A) further added by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 5). As to the specified events for these purposes and the means of notification see the Football Spectators Act 1989 s 14E(2B), (2C); and PARA 329 note 3. As to the meaning of 'enforcing authority' see PARA 328 note 3.

4 Ie in accordance with the Football Spectators Act 1989 Pt II (ss 14-22A: see PARAS 326-331, 531, 533).

5 As to the meaning of 'regulated football match' see PARA 326 and as to the meaning of 'football match' see PARA 326 note 5.

6 As to the meaning of 'United Kingdom' see PARA 9 note 2.

7 Football Spectators Act 1989 s 14E(3) (as added (see note 2); amended by the Identity Cards Act 2006 s 39(1)).

8 Football Spectators Act 1989 s 14G(1) (as added: see note 2).

9 Ie an application by the person subject to the order or the person who applied for the order or who was the prosecutor in relation to the order: Football Spectators Act 1989 s 14G(2) (as added: see note 2). In the case of

a banning order made by a magistrates' court, the reference in s 14G(2) to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court: s 14G(3) (as so added; amended by the Courts Act 2003 s 8).

10 Football Spectators Act 1989 s 14G(2) (as added: see note 2).

11 Football Spectators Act 1989 s 14J(1)(a) (as added: see note 2). A person guilty of this offence is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both: s 14J(2) (as so added). As to the standard scale see PARA 142.

12 See the Football Spectators Act 1989 ss 20, 21; and **THEATRES AND OTHER FORMS OF ENTERTAINMENT** vol 45(2) (Reissue) PARA 124.

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533. Duration and termination of banning order.

A football banning order made on complaint¹ has effect² for a period beginning with the day on which the order is made³, which must not be longer than five years or shorter than three years⁴.

If a banning order has had effect for at least two-thirds of the period determined under these provisions⁵ the person subject to the order may apply to the court by which it was made⁶ to terminate it⁷, and on such an application the court may by order terminate the banning order as from a specified date or refuse the application⁸. Where such an application in respect of a banning order is refused, no further application in respect of the order may be made within the period of six months beginning with the day of the refusal⁹.

1 As to the meaning of 'football banning order' see PARA 326; as to the making of football banning orders on complaint see the Football Spectators Act 1989 ss 14B, 21B; and PARA 530.

2 Ie subject to the Football Spectators Act 1989 Pt II (ss 14-22A: see PARAS 326-331, 531, 532).

3 Football Spectators Act 1989 s 14F(1) (ss 14F, 14H added by the Football (Disorder) Act 2000 Sch 1 paras 1, 2).

4 Football Spectators Act 1989 s 14F(2), (5) (as added (see note 3); s 14F(5) amended by the Violent Crime Reduction Act 2006 Sch 3 paras 1, 6).

5 Ie under the Football Spectators Act 1989 s 14F: see the text and notes 1-4.

6 In the case of a banning order made by a magistrates' court, the reference in s 14H(1) to the court by which it was made includes a reference to any magistrates' court acting in the same local justice area as that court: s 14H(6) (as added (see note 3); amended by the Courts Act 2003 Sch 8 para 332). The court may order the applicant to pay all or any part of the costs of an application under the Football Spectators Act 1989 s 14H: s 14H(4) (as so added).

7 Football Spectators Act 1989 s 14H(1) (as added: see note 3).

8 Football Spectators Act 1989 s 14H(2) (as added: see note 3). In exercising its powers under s 14H(2) the court must have regard to the person's character, his conduct since the banning order was made, the nature of the offence or conduct which led to it and any other circumstances which appear to it to be relevant: s 14H(3) (as so added). Where a court terminates a banning order under s 14H the designated officer for the court (in the case of a magistrates' court) or the appropriate officer (in the case of the Crown Court) must:

858 (1) give a copy of the terminating order to the person to whom the banning order relates (s 18(2)(a) (s 18(2) amended by the Football (Disorder) Act 2000 Sch 2 paras 9, 10, 14; and by the Courts Act 2003 Sch 8 para 333));

859 (2) as soon as reasonably practicable send a copy of it to the enforcing authority and to any prescribed person (Football Spectators Act 1989 s 18(2)(b) (as so amended)); and

860 (3) in a case where the person subject to the banning order is detained in legal custody, as soon as reasonably practicable send a copy of the terminating order to the person in whose custody he is detained (s 18(2)(c) (as so amended)).

As to the meaning of 'enforcing authority' see PARA 328 note 3.

9 Football Spectators Act 1989 s 14H(5) (as added: see note 3).

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(v) Foreign Travel Orders

534. Application for foreign travel order.

The police¹ may by complaint to a magistrates' court apply² for a foreign travel order in respect of a person residing in the relevant police area or who the police believe is in, or is intending to come to, the area if it appears to them that the person is a qualifying offender³ and has since the appropriate date⁴ acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made⁵.

A person is a 'qualifying offender' if he has or had been⁶:

- 1777 (1) convicted of any specified sexual offence⁷ against a child⁸;
- 1778 (2) found not guilty of such an offence by reason of insanity⁹;
- 1779 (3) found to be under a disability and to have done the act charged against him in respect of such an offence¹⁰; or
- 1780 (4) cautioned in respect of such an offence¹¹,

or, if under the law of a country¹² outside the United Kingdom¹³:

- 1781 (a) he has or had been¹⁴ convicted of an act which constituted an offence, however described by the foreign law¹⁵, under the law in force of the country concerned¹⁶ and which would have constituted a specified sexual offence¹⁷ if it had been done in any part of the United Kingdom (whether or not he has been punished for it)¹⁸;
- 1782 (b) a court exercising jurisdiction under that law has made in respect of such an offence a finding equivalent to a finding that he is not guilty by reason of insanity¹⁹;
- 1783 (c) such a court has made in respect of such an offence a finding that he is under a disability and did the act charged against him in respect of the offence²⁰; or
- 1784 (d) he has or had been cautioned in respect of such an offence²¹.

On such application being made, the court may make the order if it is satisfied that the offender is a qualifying offender²² and his behaviour since the appropriate date makes it necessary to make it, for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom²³.

A defendant may appeal to the Crown Court against the making of a foreign travel order²⁴.

1 Although these provisions refer to a 'chief officer of police' in connection with the making of applications for variation, renewal or discharge, the powers described in the text are exercisable by the police generally (ie by another suitable person to whom the chief officer has delegated his responsibility) (see *R (on the application of the Chief Constable of West Midlands Police) v Birmingham Justices* [2002] EWHC 1087 (Admin), [2003] Crim LR 37, [2002] 28 LS Gaz R 32), and it is therefore broadly correct to refer to the application having to be made by 'the police'. Determination of who is a suitable delegate is for the chief officer, and improper delegation is a matter for the courts: *R (Chief Constable of West Midlands Police) v Birmingham Justices*. This decision was made in relation to an application for an anti-social behaviour order (see PARA 304) but is equally applicable by its reasoning to an application for a foreign travel order.

2 Applications made be made to any magistrates' court whose commission area includes any part of the applicant's police area: Sexual Offences Act 2003 s 114(2). As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. An application for a foreign travel order may be in the form set out in the Magistrates' Courts (Foreign Travel Orders) Rules 2004, SI 2004/1051, Sch 1 (r 3(1)), and a summons directed to the defendant requiring him to appear before a magistrates' court to answer an application for such an order may be in the form set out in Sch 2 (r 3(2)).

Proceedings by complaint are governed by the Magistrates' Courts Act 1980 ss 51-57, under which (as in the case of criminal proceedings) the court is required to give a defendant sufficient opportunity to attend and cannot otherwise proceed in his absence (see **MAGISTRATES** vol 29(2) (Reissue) PARAS 678, 693). Because the proceedings are civil, the rules of civil evidence, not criminal evidence, apply (see *Clingham v Royal Borough of Kensington and Chelsea, R (on the application of McCann) v Crown Court at Manchester* [2002] UKHL 39, [2003] 1 AC 787, [2002] 4 All ER 593, by analogy with the procedure for anti-social behaviour orders with which those proceedings were concerned); thus hearsay evidence, admitted under the statutory procedure for the introduction of such evidence in civil cases, is, depending on its persuasiveness, capable of satisfying the proof required in applications for preventive orders under the Sexual Offences Act 2003 Pt 2 (ss 80-136).

3 Sexual Offences Act 2003 s 114(1)(a). As to a qualifying offender see the text and notes 6-21.

4 The 'appropriate date', in relation to a qualifying offender, means the date (or first date) on which he was convicted, found or cautioned as mentioned in the Sexual Offences Act 2003 s 116(1) or s 116(3) (see the text and notes 6-21): s 115(1), (5). As to the meaning of 'conviction' see PARA 363 note 2.

5 Sexual Offences Act 2003 s 114(1)(b).

6 Ie whether before or after 1 May 2004 (the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874).

7 By virtue of the Sexual Offences Act 2003 s 116(2) (amended by the Armed Forces Act 2006 Sch 16 para 207; Sexual Offences Act 2003 ss 115(2), 116(2) prospectively amended by the Policing and Crime Act 2009 s 23(1): at the date at which this volume states the law no day had been appointed for the coming into force of those amendments (which apply for the purposes of the making, variation, renewal or discharge of orders after the appointed day: see s 23(2) (not yet in force))) the offences specified for these purposes are:

- 861 (1) the offences relating to the taking, possession etc of indecent photographs of children (ie the offences under the Protection of Children Act 1978 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 757) or the Criminal Justice Act 1988 s 160 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 758)) and certain customs offences relating to the prohibited importation of indecent or obscene articles (ie an offence under the Customs and Excise Management Act 1979 s 170 (penalty for fraudulent evasion of duty etc: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178)) specified in the Sexual Offences Act 2003 Sch 3 paras 13-15 (see PARA 560);
- 862 (2) committing an offence or trespassing with intent to commit a sexual offence (ie an offence under ss 62, 63 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 231-232)) if the intended offence was an offence against a person aged under 16 (or, as from a day to be appointed, under 18) (see PARA 560);
- 863 (3) a specified corresponding service offence (ie an offence specified in Sch 3 paras 93, 93A (see PARA 560)) of which the corresponding civil offence is any of the offences referred to above and, in the case of the service offence corresponding to the offences under the Sexual Offences Act 2003 ss 62, 63, the intended offence was an offence against a person aged under 16 (or, as from a day to be appointed, under 18) (see PARA 560); and
- 864 (4) any other offence listed under Sch 3 (see PARA 560) if the victim of the offence was aged under 16 (or, as from a day to be appointed, under 18) at the time of the offence.

8 Sexual Offences Act 2003 ss 115(4), 116(1)(a).

9 Sexual Offences Act 2003 s 116(1)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

10 Sexual Offences Act 2003 s 116(1)(c). As to references to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

11 Sexual Offences Act 2003 s 116(1)(d). For the purposes of Pt 2, 'cautioned' means cautioned by a police officer after having admitted the offence, or, in England and Wales, reprimanded or warned within the meaning given by the Crime and Disorder Act 1998 s 65 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 1235-1236); and 'caution' is to be interpreted accordingly: Sexual Offences Act 2003 s 133(1) (amended by the

Criminal Justice and Immigration Act 2008 Sch 26, paras 53, 56). As to cautions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 959.

12 'Country' includes territory: Sexual Offences Act 2003 s 133(1).

13 As to the meaning of 'United Kingdom' see PARA 9 note 2.

14 See note 6.

15 Sexual Offences Act 2003 s 116(5).

16 Sexual Offences Act 2003 s 116(4)(a).

17 See note 7.

18 Sexual Offences Act 2003 s 116(3)(a), (4)(b). On an application for a foreign travel order this condition is to be taken as met unless, not later than three days before the hearing date for the application for the order (Magistrates' Courts (Foreign Travel Orders) Rules 2004, SI 2004/1051, r 4), the defendant serves on the applicant a notice stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met (Sexual Offences Act 2003 s 116(6)(a)), showing his grounds for that opinion (s 116(6)(b)), and requiring the applicant to prove that the condition is met (s 116(6)(c)), although the court may, if it thinks fit, permit the defendant to require the applicant to prove that the condition is met without service of such a notice (s 116(7)).

19 Sexual Offences Act 2003 s 116(3)(b).

20 Sexual Offences Act 2003 s 116(3)(c).

21 Sexual Offences Act 2003 s 116(3)(d).

22 Sexual Offences Act 2003 s 114(3)(a).

23 Sexual Offences Act 2003 s 114(3)(b). 'Protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom' means protecting persons under 16 (or, as from a day to be appointed, under 18) generally or any particular person under 16 (or, as from a day to be appointed, under 18) from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute a listed offence if done in any part of the United Kingdom: s 115(2) (prospectively amended: see note 7).

A foreign travel order must be in the form set out in the Magistrates' Courts (Foreign Travel Orders) Rules 2004, SI 2004/1051, Sch 3: r 3(3). As soon as reasonably practicable after a foreign travel order has been made, the designated officer for the court must serve a copy of the order on the defendant: r 3(4) (amended by SI 2005/617). Any copy of an order so required to be sent must be either given to him in person or sent by post to his last known address and, if so given or sent, is deemed to have been received by him, unless the defendant proves that it was not received by him: Magistrates' Courts (Foreign Travel Orders) Rules 2004, SI 2004/1051, r 3(4) (as so amended).

24 See PARA 536.

UPDATE

534 Application for foreign travel order

NOTES 2, 23--Forms set out in SI 2004/1051 Schs 2, 3 substituted, r 3(3) amended: SI 2010/605.

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535. Effect of foreign travel orders.

A foreign travel order¹ has effect for a fixed period of not more than six months (or, as from a day to be appointed, five years) specified in it² and prohibits the defendant from doing whichever of the following is specified in the order:

- 1785 (1) travelling to any country³ outside the United Kingdom⁴, named or described in the order⁵;
- 1786 (2) travelling to any country outside the United Kingdom other than a country named or described in the order⁶; or
- 1787 (3) travelling to any country outside the United Kingdom⁷.

The only prohibitions which may be included in the order are those necessary for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom⁸.

Where a defendant is not a 'relevant offender' for the purposes of the general notification requirements⁹, a foreign travel order causes him to be subject to the travel notification requirements¹⁰; and for these purposes the defendant is to be treated as if he was a relevant offender¹¹.

Provision is made for the variation, renewal or discharge of a foreign travel order¹².

1 As to applications for foreign travel orders see PARA 534.

2 Sexual Offences Act 2003 s 117(1) (s 117(1) prospectively amended, ss 117A, 122(1A) prospectively added, by the Policing and Crime Act 2009 ss 24(1), 25(1)-(3)). At the date at which this volume states the law no day had been appointed for the coming into force of these amendments (which apply in relation to orders made, varied or renewed after the appointed day: see ss 24(2), 25(4) (not yet in force)). Where a foreign travel order is made in relation to a person already subject to a foreign travel order, the earlier order ceases to have effect: Sexual Offences Act 2003 s 117(5).

3 As to the meaning of 'country' see PARA 534 note 12.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 Sexual Offences Act 2003 s 117(2)(a).

6 Sexual Offences Act 2003 s 117(2)(b).

7 Sexual Offences Act 2003 s 117(2)(c). As from a day to be appointed where a foreign travel order contains a prohibition within 117(2)(c) it must require the defendant to surrender all of his passports, at a police station specified in the order, on or before the date when the prohibition takes effect or within a period specified in the order: s 117A(1), (2) (prospectively added: see note 2). Any passports so surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within s 117(2)(c) (unless the passport in question is a passport issued by or on behalf of the authorities of a country outside the United Kingdom and the passport has been returned to those authorities, or it is a passport issued by or on behalf of an international organisation and the passport has been returned to that organisation): s 117A(3), (4) (as so prospectively added). In s 117A 'passport' means a United Kingdom passport within the meaning of the Immigration Act 1971, a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation, or a document that can be used (in some or all circumstances) instead of a passport: s 117A(5) (as so prospectively added). A person commits an offence if, without reasonable excuse, he fails to comply with a requirement under s 117A(2): s 122(1A) (as so prospectively added).

8 Sexual Offences Act 2003 s 117(3). As to the meaning of 'protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom' see PARA 534 note 23 (definition applied by s 117(6)).

9 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

10 Ie the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, made under the Sexual Offences Act 2003 s 86: see PARA 567.

11 Sexual Offences Act 2003 s 117(4).

12 See PARAS 538-540.

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536. Appeals against foreign travel orders.

A defendant may appeal to the Crown Court against the making of a foreign travel order¹, and on any such appeal the court may make such orders as may be necessary to give effect to its determination of the appeal and such incidental or consequential order as may appear to it to be just².

1 Sexual Offences Act 2003 s 119(1)(a). As to applications for foreign travel orders see PARA 534. As to the effect of orders see PARA 535.

2 Sexual Offences Act 2003 s 119(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(v) Foreign Travel Orders/537. Breach.

537. Breach.

A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a foreign travel order¹. A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding five years², or on summary conviction to imprisonment for a term not exceeding six months³ or to a fine not exceeding the statutory maximum⁴ or to both⁵.

1 Sexual Offences Act 2003 s 122(1). As to applications for foreign travel orders see PARA 534. As to the effect of orders see PARA 535.

2 Sexual Offences Act 2003 s 122(2)(b). It is not open to the court by or before which a person is convicted of this offence to make an order of conditional discharge (see PARA 40) in respect of it: s 122(3).

3 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed.

4 As to the statutory maximum see PARA 140.

5 Sexual Offences Act 2003 s 122(2)(a).

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538. Variation, renewal and discharge.

The defendant or the police may apply for the variation, renewal or discharge of a foreign travel order¹. An application must be made to the appropriate court², which in the case of a foreign travel order is the court which made the order³, or a magistrates' court for the area in which the defendant resides⁴, or, where the application is made by the police, any magistrates' court whose commission area includes any part of the relevant police area⁵. An application to a magistrates' court or youth court must be made by complaint⁶.

1 Sexual Offences Act 2003 s 118(1), (2). Although these provisions refer to a 'chief officer of police' in connection with the making of applications for variation, renewal or discharge, the powers described in the text are exercisable by the police generally: see PARA 534 note 1. Applications for variation, renewal or discharge may be made by the police for the area in which the defendant resides (s 118(2)(c)), or police who believe that the defendant is in, or is intending to come to, the area (s 118(2)(d)), or police who made the application for the order in question (s 118(2)(b)). As to foreign travel orders see PARAS 534-537. As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

2 Sexual Offences Act 2003 s 118(1).

3 Sexual Offences Act 2003 s 118(5)(a). Any order made by the Crown Court on an appeal under s 119(1)(a) (see PARAS 536) against the making of a foreign travel order is for these purposes to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court): s 119(3).

4 Sexual Offences Act 2003 s 118(5)(b).

5 Sexual Offences Act 2003 s 118(5)(c).

6 Sexual Offences Act 2003 s 118(1). As to proceedings for complaint and the evidential burden in applications concerning preventive orders see PARA 534 note 2.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(v) Foreign Travel Orders/539. Outcome of an application for variation, renewal or discharge.

539. Outcome of an application for variation, renewal or discharge.

On an application for the variation, renewal or discharge of a foreign travel order¹ the court, after hearing the applicant and representations from any other person (if he wishes to be heard) who could have applied for a variation, renewal or discharge, may make such order varying, renewing or discharging the main order as it considers appropriate², although a renewal or variation of a foreign travel order may impose additional prohibitions on the defendant only if it is necessary to do so for the purpose of protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom³, and any such order may only contain such prohibitions as are necessary for this purpose⁴.

1 As to such applications see PARA 538.

2 Sexual Offences Act 2003 s 118(3).

3 Sexual Offences Act 2003 s 118(4). As to the meaning of 'protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom' see PARA 534 note 23. As to the meaning of 'United Kingdom' see PARA 9 note 2.

4 Sexual Offences Act 2003 s 118(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(v) Foreign Travel Orders/540. Appeals against order for variation, renewal or discharge.

540. Appeals against order for variation, renewal or discharge.

A defendant may appeal against an order varying, renewing or discharging a foreign travel order¹, or the refusal to make such an order². Appeals are made to the Crown Court³, which may make such orders as may be necessary to give effect to its determination of the appeal and such incidental or consequential order as may appear to it to be just⁴.

1 As foreign travel orders see PARAS 534-537. As to orders for the variation, renewal or discharge of foreign travel orders see PARAS 538-539.

2 Sexual Offences Act 2003 s 119(1)(b).

3 Sexual Offences Act 2003 s 119(1).

4 Sexual Offences Act 2003 s 119(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(vi) Forfeiture in Civil Proceedings of Terrorist Cash/541. Forfeiture in civil proceedings of terrorist cash.

(vi) Forfeiture in Civil Proceedings of Terrorist Cash

541. Forfeiture in civil proceedings of terrorist cash.

'Terrorist cash' means cash¹ which:

- 1788 (1) is intended to be used for the purposes of terrorism² or consists of resources of an organisation which is a proscribed organisation³; or
- 1789 (2) is property⁴ earmarked as terrorist property⁵.

It may be forfeited in civil proceedings before a magistrates' court⁶, whether or not any proceedings have been brought for an offence in connection with the cash⁷.

1 By virtue of the Anti-terrorism, Crime and Security Act 2001 s 1(1), Sch 1 para 1(1), (2) 'cash' means:

- 865 (1) coins and notes in any currency;
- 866 (2) postal orders;
- 867 (3) cheques of any kind, including travellers' cheques;
- 868 (4) bankers' drafts;
- 869 (5) bearer bonds and bearer shares,

found at any place in the United Kingdom. Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by order: Sch 1 para 1(3). At the date at which this volume states the law no such order had been made.

2 As to the meaning of 'terrorism' see the Terrorism Act 2000 s 1(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383 (definition applied by the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 19(1)). References in Sch 1 to anything done or intended to be done for the purposes of terrorism include anything done or intended to be done for the benefit of a proscribed organisation: Sch 1 para 19(4). As to proscribed organisations see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386.

3 Anti-terrorism, Crime and Security Act 2001 s 1(1)(a), (b), Sch 1 para 1(1)(a). As to the meaning of 'proscribed organisation' see the Terrorism Act 2000 s 1(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386 (definition applied by the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 19(1)).

4 'Property' is all property wherever situated and includes: (1) money (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 17(1)(a)); (2) all forms of property, real or personal, heritable or moveable (Sch 1 para 17(1)(b)); (3) things in action and other intangible or incorporeal property (Sch 1 para 17(1)(c)). Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read, in relation to land, as a reference to any interest which he holds in the land (Sch 1 para 17(2), (3)) and, in relation to property other than land, as a reference to the property (if it belongs to him) or to any other interest which he holds in the property (Sch 1 para 17(4)).

'Interest' in relation to land in England and Wales or Northern Ireland means any legal estate and any equitable interest or power and in the case of land in Scotland means any estate, interest, servitude or other heritable right in or over land, including a heritable security; and 'interest', in relation to property other than land, includes any right (including a right to possession of the property): Sch 1 para 19(1).

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 1(1)(b). As to property earmarked as terrorist property see PARA 542.

6 Anti-terrorism, Crime and Security Act 2001 s 1(1). As to the procedure to be followed for applications to a magistrates' court for the detention, further detention, forfeiture or release of cash seized by a constable, officer of Revenue and Customs or immigration officer on reasonable suspicion of being related to terrorism see the Magistrates' Courts (Detention and Forfeiture of Terrorist Cash) (No 2) Rules 2001, SI 2001/4013 (amended by SI 2003/1236; SI 2005/617).

7 Anti-terrorism, Crime and Security Act 2001 s 1(2).

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542. Property obtained through terrorism and property earmarked as terrorist property.

A person obtains property¹ through terrorism² if he obtains property by or in return for acts of terrorism³, or acts carried out for the purposes of terrorism⁴. In deciding whether any property was obtained through terrorism it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts⁵, and it is not necessary to show that the act was of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism⁶.

Property obtained through terrorism is earmarked as terrorist property⁷. Where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property, the further property is treated as representing the property obtained through terrorism⁸. Where property obtained through terrorism (the 'original property') is or has been earmarked as terrorist property, property which represents the original property is also earmarked⁹.

Provision is made in connection with the disposal and mixture of earmarked property¹⁰ and the circumstances in which property will cease to be earmarked property¹¹.

1 As to the meaning of 'property' see PARA 541 note 4.

2 As to the meaning of 'terrorism' see PARA 541 note 2.

3 As to an 'act of terrorism' for the purposes of the Terrorism Act 2000 see s 1(5); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383.

4 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 11(1).

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 11(2)(a).

6 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 11(2)(b).

7 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 12(1). For the purpose of deciding whether or not property was earmarked as terrorist property at any time, it is to be assumed that Sch 1 was in force at that and any other relevant time: Sch 1 para 19(3).

8 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 15.

9 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 13(1).

10 See PARA 543.

11 See PARA 544.

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543. Disposal and mixture of earmarked property.

If property¹ obtained through terrorism² has been disposed of³ (since it was so obtained) it is earmarked as terrorist property⁴ only if it is held by a person into whose hands it may be followed⁵. If a person enters into a transaction by which he disposes of earmarked property, whether the original property⁶ or property which represents the original property, and he obtains other property in place of it, the other property represents the original property⁷. If a person disposes of earmarked property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property)⁸.

Where a person's property which is earmarked as terrorist property is mixed with other property⁹ (whether his property or another's), the portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism¹⁰.

If a person disposes of property earmarked as terrorist property, and the person who obtains it on the disposal does so in good faith, for value¹¹ and without notice that it was earmarked, the property may not be followed into that person's hands and, accordingly, it ceases to be earmarked¹².

1 As to the meaning of 'property' see PARA 541 note 4.

2 As to the meaning of 'terrorism' see PARA 541 note 2.

3 References to a person disposing of his property include a reference to his disposing of a part (or portion) of it, or to his granting an interest in it, or to both; and references to the property disposed of are references to any property obtained on the disposal: Anti-terrorism, Crime and Security Act 2001 s 11(1). If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is to be determined in the same manner as it is on any other disposal of earmarked property: Sch 1 para 18(2). A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes: Sch 1 para 18(3). Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other: Sch 1 para 18(4).

4 See PARA 542.

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 12(2). Earmarked property obtained through terrorism may be followed into the hands of a person obtaining it on a disposal by the person who obtained the property through terrorism (Sch 1 para 12(3)(a)) or a person into whose hands it may be followed by virtue of Sch 1 para 12(3) (Sch 1 para 12(3)(b)).

6 As to the meaning of the 'original property' see PARA 542.

7 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 13(2).

8 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 13(3).

9 Property earmarked as terrorist property is mixed with other property if (for example) it is used:

870 (1) to increase funds held in a bank account (Sch 1 para 14(3)(a));

871 (2) in part payment for the acquisition of an asset (Sch 1 para 14(3)(b));

872 (3) for the restoration or improvement of land (Sch 1 para 14(3)(c)); or

873 (4) by a person holding a leasehold interest in the property to acquire the freehold (Sch 1 para 14(3)(d)).

10 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 14(1), (2).

11 A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 18(5). 'Value' means market value: Sch 1 para 19(1).

12 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(1). However, this does not affect the question of whether (under the rule about tracing under Sch 1 para 13(2): see the text and notes 6-7) any property obtained on the transaction in place of the property disposed of is earmarked: Sch 1 para 16(7).

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544. Property ceasing to be earmarked property.

In addition to the provision made in connection with property¹ that has been disposed of², property which would otherwise be earmarked as terrorist property³ ceases to be earmarked if:

- 1790 (1) in pursuance of a judgment in civil proceedings (whether in the United Kingdom⁴ or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant⁵;
- 1791 (2) payment is made to a person in pursuance of a compensation order⁶;
- 1792 (3) payment is made to a person in pursuance of a restitution order⁷ or a person otherwise obtains property in pursuance of such an order⁸;
- 1793 (4) in pursuance of a financial restitution order⁹ an amount is paid or distributed among any persons in accordance with the court's directions¹⁰; or
- 1794 (5) in pursuance of a restitution requirement¹¹ an amount is paid or distributed among any persons¹².

1 As to the meaning of 'property' see PARA 541 note 4.

2 See PARA 543.

3 See PARA 542.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(2)(a). Property will cease to be earmarked under this provision only if the claimant's claim is based on the defendant's criminal conduct (Sch 1 para 16(2)(b)) and the sum received (or property obtained) by the claimant would otherwise be earmarked as terrorist property (Sch 1 para 16(2)(c)). For these purposes 'criminal conduct' means conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there: Sch 1 para 19(1).

6 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(3)(a). For this purpose a compensation order is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see PARA 375) (or corresponding Scottish or Northern Ireland provisions) or a service compensation order under the Armed Forces Act 2006 (see **ARMED FORCES**): Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(3)(a) (amended by the Armed Forces Act 2006 Sch 16 para 196). Property will cease to be earmarked under this provision only if the sum received would otherwise be earmarked as terrorist property: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(3)(b).

7 I.e. an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 148(2) (see PARA 388) or corresponding Northern Ireland provisions: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(3)(a).

8 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(4)(a). Property will cease to be earmarked under this provision only if the sum received or property obtained would otherwise be earmarked as terrorist property: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(4)(b).

9 I.e. an order under the Financial Services and Markets Act 2000 s 382(3) or s 383(5) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 472-473).

10 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(5)(a). Property will cease to be earmarked under this provision only if the sum received by the persons in question would otherwise be earmarked as terrorist property: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(5)(b).

11 le made by the Financial Services Authority under the Financial Services and Markets Act 2000 s 384(5) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 474).

12 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(6)(a). Property will cease to be earmarked under this provision only if the sum received by the persons in question would otherwise be earmarked as terrorist property: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 16(6)(b).

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545. Seizure and detention of terrorist cash.

An authorised officer¹ may seize any cash² if he has reasonable grounds for suspecting that it is terrorist cash³. He may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part⁴.

While the authorised officer continues to have reasonable grounds for his suspicion, cash seized may be detained initially for 48 hours⁵. That period may be extended by a magistrates' court order⁶, an application for which may be made by the Commissioners for Her Majesty's Revenue and Customs or an authorised officer⁷. The court may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is satisfied:

- 1795 (1) that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism⁸ and that either its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or proceedings against any person for an offence with which the cash is connected have been started and have not been concluded⁹;
- 1796 (2) that there are reasonable grounds for suspecting that the cash consists of resources of an organisation which is a proscribed organisation¹⁰ and that either its continued detention is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or proceedings against any person for an offence with which the cash is connected have been started and have not been concluded¹¹; or
- 1797 (3) that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property¹² and that either its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or proceedings against any person for an offence with which the cash is connected have been started and have not been concluded¹³.

¹ I.e. a constable, an officer of Revenue and Customs or an immigration officer: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 19(1).

² As to the meaning of 'cash' see PARA 541 note 1.

³ Anti-terrorism, Crime and Security Act 2001 Sch 1 para 2(1). As to the meaning of 'terrorist cash' see PARA 541. An authorised officer may enter a vehicle (which term includes an aircraft, hovercraft, train or vessel: Terrorism Act 2000 s 121) for the purpose of exercising any of the functions conferred on him by virtue of the provisions relating to terrorist cash under the Anti-terrorism, Crime and Security Act 2001 Sch 1, and may if necessary use reasonable force for the purpose of exercising a power conferred on him by virtue of those provisions: Terrorism Act 2000 s 115, Sch 14 paras 2, 3 (amended by the Anti-terrorism, Crime and Security Act 2001 s 2(5)(b)).

By virtue of the Terrorism Act 2000 Sch 14 para 4(1) (amended by the Serious Organised Crime and Police Act 2005 Sch 4 paras 125, 130) information acquired by an officer may be supplied:

874 (1) to the Secretary of State for use in relation to immigration;

- 875 (2) to the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs;
- 876 (3) to a constable;
- 877 (4) to the Serious Organised Crime Agency; and
- 878 (5) to a person specified by order of the Secretary of State for use of a kind specified in the order.

An officer must perform functions conferred on him by virtue of the Anti-terrorism, Crime and Security Act 2001 Sch 1 in accordance with the code of practice about the exercise by officers of these functions which has been issued by the Secretary of State: Terrorism Act 2000 Sch 14 paras 5, 6(1) (amended by the Anti-terrorism, Crime and Security Act 2001 s 2(6)). The Code of Practice for Authorised Officers was brought into force by the Terrorism Act 2000 (Code of Practice for Authorised Officers) Order 2001, SI 2001/425. The code was amended by the Anti-terrorism, Crime and Security Act 2001 (Commencement No 1 and Consequential Provisions) Order 2001, SI 2001/4019. The procedure for making the code of practice (or a revised code of practice) for authorised officers is laid down by the Terrorism Act 2000 Sch 14 paras 6(4), 7. The code is admissible in evidence in criminal and civil proceedings, and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant: Sch 14 para 6(3).

The failure by an officer to observe a provision of the code does not of itself make him liable to criminal or civil proceedings: Sch 14 para 6(2).

4 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 2(2). See note 3.

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(1). In determining the period of 48 hours specified in Sch 1 para 3(1) there must be disregarded any Saturday or Sunday, Christmas Day, Good Friday and any day that is a bank holiday under the Banking and Financial Dealings Act 1971 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1437) in the part of the United Kingdom in which the cash is seized: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(1A) (added by the Counter-Terrorism Act 2008 s 83(1), (2)).

6 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(2). The order may not authorise the detention of any of the cash for longer than a three-month period beginning with the date of the order, and, in the case of a further order, longer than a two-year period beginning with the date of the first order: Sch 1 para 3(2). A justice of the peace may exercise the power of a magistrates' court to make the first order extending the period: Sch 1 para 3(3). An application made after 13 April 2006 (ie the date on which the Terrorism Act 2006 s 35 was brought into force by the Terrorism Act 2006 (Commencement No 1) Order 2006, SI 2006/1013) to a justice of the peace for an order under the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(2) making the first extension of the period may be made and heard without notice of the application or hearing having been given to any of the persons affected by the application or to the legal representative of such a person (Sch 1 para 3(3A)(a) (Sch 1 para 3(3A) added by the Terrorism Act 2006 s 35(1), (2)) and may be heard and determined in private in the absence of persons so affected and of their legal representatives (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(3A)(b) (as so added)). An order extending the period of detention of cash must provide for notice to be given to persons affected by it: Sch 1 para 3(4).

If cash is detained for more than 48 hours (as determined in accordance with Sch 1 para 3(1A): see note 5), it must (unless the cash is required as evidence of an offence or evidence in proceedings relating to detention or forfeiture of the property) be held in an interest-bearing account and the interest accruing on it must be added to it on its forfeiture or release: Sch 1 para 4(1), (3) (Sch 1 para 4(1) amended by the Counter-Terrorism Act 2008 s 83(1), (3)). Where the authorised officer seizing cash reasonably suspects that only part of it was terrorist cash under the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 2(2) (see the text and note 4), he must release so much of the cash then held in the account as is not attributable to terrorist cash: Sch 1 para 4(2).

7 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(5).

8 As to the meaning of 'terrorism' see PARA 541 note 2.

9 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(6).

10 As to the meaning of 'proscribed organisation' see PARA 541 note 3.

11 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(7). An organisation's resources include any cash which is applied or made available, or is to be applied or made available, for use by the organisation: Sch 1 para 19(5).

12 As to the meaning of 'property' see PARA 541 note 4. As to property earmarked as terrorist property see PARA 542.

13 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(8).

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546. Forfeiture.

While cash¹ is detained² the Commissioners for Her Majesty's Revenue and Customs or an authorised officer³ may apply to a magistrates' court for the forfeiture of the whole or any part of it⁴, and the court may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash⁵. A party to proceedings for such an order (a 'forfeiture order') who is aggrieved by an order made in the proceedings or by the decision of the court not to make an order may appeal to the Crown Court⁶, which may make any order that appears to the court to be appropriate⁷ and, if it upholds the appeal, may order the release of the cash⁸.

Cash forfeited in this way, and any accrued interest on it, must be paid into the Consolidated Fund⁹.

1 As to the meaning of 'cash' see PARA 541 note 1.

2 Ie under the Anti-terrorism, Crime and Security Act 2001 Sch 1: see Sch 1 para 6(1). As to the seizure and detention of terrorist cash see PARA 545.

3 As to the meaning of 'authorised officer' see PARA 545 note 1.

4 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 6(1).

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 6(2). As to the meaning of 'terrorist cash' see PARA 541. In the case of property earmarked as terrorist property (see PARA 542) which belongs to joint tenants one of whom is an excepted joint owner, the order may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share: Sch 1 para 6(3). An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked; and references to his share of the earmarked property are references to so much of the property as would have been his if the joint tenancy had been severed: Sch 1 para 6(4).

6 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7(1)(a) (Sch 1 para 7 substituted, Sch 1 para 7A added, by the Counter-Terrorism Act 2008 s 84(1)). The appeal must be brought before the end of the period of 30 days beginning with the date on which the order is made or, as the case may be, the decision is given (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7(2) (as so substituted)), although if:

879 (1) a successful application for a forfeiture order relies (wholly or partly) on the fact that an organisation is proscribed (s 7A(1)(a) (as so added));

880 (2) an application under the Terrorism Act 2000 s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386) for a deproscription order in respect of the organisation is refused by the Secretary of State (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7A(1)(b) (as so added));

881 (3) the forfeited cash is seized under Sch 1 on or after the date of the refusal of that application (Sch 1 para 7A(1)(c) (as so added));

882 (4) an appeal against that refusal is allowed under the Terrorism Act 2000 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386) (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7A(1)(d) (as so added));

883 (5) a deproscription order is made accordingly (Sch 1 para 7A(1)(e) (as so added)); and

884 (6) if the order is made in reliance on the Terrorism Act 2000 s 123(5) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386), a resolution is passed by each House of Parliament under s 123(5)(b) (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7A(1)(f) (as so added)),

an appeal under Sch 1 para 7 against the forfeiture order may be brought at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force (Sch 1 para 7A(2) (as so added)). In Sch 1 para 7A a 'deproscription order' means an order under the Terrorism Act 2000 s 3(3)(b) or (8) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 386): Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7A(3) (as so added).

7 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7(3) (as substituted: see note 6).

8 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 7(4) (as substituted: see note 6).

9 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 8(1). It is not, however, to be paid in before the end of the period within which an appeal under Sch 1 para 7 may be made or if a person appeals, before the appeal is determined or otherwise disposed of: Sch 1 para 8(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq.

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547. Release of detained cash.

A magistrates' court may direct the release of the whole or any part of detained cash¹ if satisfied, on an application by the person from whom the cash was seized, that the conditions for the detention of cash² are no longer met in relation to the cash to be released³. In addition, an authorised officer⁴ may, after notifying the magistrates' court (or justice) under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified⁵. Cash must not be released, however, if an application for its forfeiture or for its release⁶ is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded⁷. Nor may cash be released if (in the United Kingdom or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded⁸.

A person who claims that any detained cash⁹ belongs to him may apply to a magistrates' court for the cash or part to be released to him¹⁰. If it appears to the court concerned that:

- 1798 (1) the applicant was deprived of the cash claimed, or of property¹¹ which it represents, by criminal conduct¹²;
- 1799 (2) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and did not then represent such property¹³; and
- 1800 (3) the cash claimed belongs to him¹⁴,

the court may order the cash to be released to the applicant¹⁵.

¹ As to the meaning of 'cash' see PARA 541 note 1. As to the seizure and detention of terrorist cash see PARA 545.

² Ie the conditions under the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3: see PARA 545.

³ Anti-terrorism, Crime and Security Act 2001 Sch 1 para 5(1), (2).

⁴ As to the meaning of 'authorised officer' see PARA 545 note 1.

⁵ Anti-terrorism, Crime and Security Act 2001 Sch 1 para 5(3).

⁶ Ie under the Anti-terrorism, Crime and Security Act 2001 Sch 1 paras 6, 9: see PARAS 546, 547.

⁷ Anti-terrorism, Crime and Security Act 2001 Sch 1 para 5(4)(a). Proceedings against any person for an offence are concluded when the person is convicted or acquitted, the prosecution is discontinued or the jury is discharged without a finding otherwise than in circumstances where the proceedings are continued without a jury: Sch 1 para 19(6) (amended by the Criminal Justice Act 2003 Sch 36 para 77).

⁸ Anti-terrorism, Crime and Security Act 2001 Sch 1 para 5(4)(b).

⁹ Ie under the Anti-terrorism, Crime and Security Act 2001 Sch 1 or any part of it: see Sch 1 para 9(1).

¹⁰ Anti-terrorism, Crime and Security Act 2001 Sch 1 para 9(1). The application may be made in the course of proceedings for the extended detention of seized cash (see Sch 1 para 3; and PARA 545) or for forfeiture of it, or at any other time: Sch 1 para 9(2).

¹¹ As to the meaning of 'property' see PARA 541 note 4.

12 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 9(3)(a). For these purposes, 'criminal conduct' means conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there: Sch 1 para 19(1).

13 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 9(3)(b).

14 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 9(3)(c).

15 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 9(3).

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548. Compensation.

Compensation is payable in respect of detained cash¹, unless an order has been made² for the release of the cash³:

- 1801 (1) if no forfeiture order⁴ is made in respect of the cash⁵;
- 1802 (2) if, for any period after the initial detention of the cash for 48 hours⁶, the cash was not held in an interest-bearing account while detained⁷;
- 1803 (3) if the court is satisfied⁸ that the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional⁹.

Compensation under these provisions is to be paid by either the Commissioners for Her Majesty's Revenue and Customs, the relevant police fund or the Secretary of State, depending on by whom the cash was seized¹⁰.

1 Ie cash detained under the Anti-terrorism, Crime and Security Act 2001 Sch 1: see PARA 541 et seq. As to the meaning of 'cash' see PARA 541 note 1. If a forfeiture order (see PARA 546) is made in respect only of part of any cash detained, these provisions concerning compensation have effect in relation to the other part: Sch 1 para 10(9).

2 Ie under the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 9: see PARA 547.

3 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 10(10).

4 As to the meaning of 'forfeiture order' see PARA 546.

5 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 10(1). In such a case the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court for compensation: Sch 1 para 10(1).

6 Ie as determined in accordance with the Anti-terrorism, Crime and Security Act 2001 Sch 1 para 3(1A): see PARA 545 note 5.

7 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 10(2) (amended by the Counter-Terrorism Act 2008 s 83(1), (3)). In such a case the court may order an amount of compensation to be paid to the applicant: Anti-terrorism, Crime and Security Act 2001 Sch 1 para 10(2) (as so amended). The amount of compensation to be paid under Sch 1 para 10(2) is the amount the court thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account: Sch 1 para 10(3).

8 Ie taking account of any interest to be paid under the Anti-terrorism, Crime and Security Act 2001 Sch 1 or any amount to be paid under Sch 1 para 10(2) (see note 7): Sch 1 para 10(4).

9 Anti-terrorism, Crime and Security Act 2001 Sch 1 para 10(4). In such a case the court may order compensation (or additional compensation) to be paid to the applicant: Sch 1 para 10(4). The amount of compensation to be paid is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances: Sch 1 para 10(5).

10 If the cash was seized by an officer of Revenue and Customs the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs (Anti-terrorism, Crime and Security Act 2001 Sch 1 para 10(6)); if the cash was seized by a constable, the compensation is to be paid out of the police fund from which the expenses of the police force are met (Sch 1 para 10(7)); and if the cash was seized by an immigration officer, the compensation is to be paid by the Secretary of State (Sch 1 para 10(8)). 'Immigration officer' means a person appointed as an immigration officer under the Immigration Act 1971 Sch 2 para 1 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 140): Anti-terrorism, Crime and Security Act 2001 Sch 1 para 19(1).

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(vii) Freezing Orders

549. Power of the Treasury to make freezing orders.

A freezing order is an order which prohibits persons from making funds (that is, financial assets and economic benefits of any kind¹) available² to or for the benefit of a person or persons specified in the order³. The Treasury has power to make a freezing order if it reasonably believes that action to the detriment of the United Kingdom's economy (or part of it), or action constituting a threat to the life or property of United Kingdom nationals or residents⁴, has been or is likely to be taken by the government of a country or territory outside the United Kingdom or by a resident of such a country or territory⁵.

A freezing order must be kept under review by the Treasury⁶ and lapses two years after it is made⁷. A freezing order binds the Crown but no criminal liability attaches to it for breach of an order⁸.

1 The order may include provision that funds include gold, cash, deposits, securities (such as stocks, shares and debentures) and such other matters as the order may specify: Anti-terrorism, Crime and Security Act 2001 Sch 3 paras 1, 2.

2 The order must include a definition of 'making funds available': Anti-terrorism, Crime and Security Act 2001 Sch 3 para 3. It must also include provision for the granting of licences authorising funds to be made available: Sch 3 para 4.

3 See the Anti-terrorism, Crime and Security Act 2001 Sch 3 para 5. The order may require the person to provide information and documents (Sch 3 para 5) and to disclose certain information which came to him in the course of business in the regulated sector (Sch 3 para 6). It may contain provisions specifying offences under the order (Sch 3 paras 7, 9) and the procedure for instituting proceedings for such offences (Sch 3 para 8), and it may also contain provision for awards of compensation (Sch 3 para 10). If a person specified in the order makes a written request to the Treasury to give him the reason why he is specified, the Treasury must, unless or to the extent that, particulars of the reason would not be required to be disclosed to the applicant in proceedings to set aside the freezing order, give him the reason in writing: see Sch 3 para 11 (amended by the Counter-Terrorism Act 2008 s 70).

A freezing order ceases to have effect after 28 days unless approved by a resolution of each House of Parliament: Anti-terrorism, Crime and Security Act 2001 s 10.

4 For this purpose a national of the United Kingdom is an individual who is:

885 (1) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen (Anti-terrorism, Crime and Security Act 2001 s 9(1)(a));

886 (2) a person who under the British Nationality Act 1981 is a British subject (Anti-terrorism, Crime and Security Act 2001 s 9(1)(b)); or

887 (3) a British protected person within the meaning of the British Nationality Act 1981 (Anti-terrorism, Crime and Security Act 2001 s 9(1)(c)).

As to the meaning of 'United Kingdom' see PARA 9 note 2. As to British citizenship and nationality in its various forms see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

A resident of the United Kingdom is:

888 (a) an individual who is ordinarily resident in the United Kingdom (Anti-terrorism, Crime and Security Act 2001 s 9(2)(a));

- 889 (b) a body incorporated under the law of any part of the United Kingdom (Anti-terrorism, Crime and Security Act 2001 s 9(2)(b)); or
- 890 (c) a Scottish partnership (Anti-terrorism, Crime and Security Act 2001 s 9(2)(c)).
- 891 A resident of a country or territory outside the United Kingdom is:
- 892 (i) an individual who is ordinarily resident in such a country or territory (Anti-terrorism, Crime and Security Act 2001 s 9(3)(a)); or
- 893 (ii) a body incorporated under the law of such a country or territory (for which purpose a branch situated in a country or territory outside the United Kingdom of a body incorporated under the law of any part of the United Kingdom or a Scottish partnership is to be treated as a body incorporated under the law of the country or territory where the branch is situated (Anti-terrorism, Crime and Security Act 2001 s 9(3)(b), (4)).

5 Anti-terrorism, Crime and Security Act 2001 s 4. At the date at which this volume states the law only one substantive order had been made under this provision: the Landsbanki Freezing Order 2008, SI 2008/2668 (amended by SI 2008/2766), which imposed an asset freeze in relation to the Icelandic bank Landsbanki Islands hf. The asset freeze has been subsequently lifted and the order accordingly revoked (see the Landsbanki Freezing (Revocation) Order 2009, SI 2009/1392).

6 Anti-terrorism, Crime and Security Act 2001 s 7.

7 Anti-terrorism, Crime and Security Act 2001 s 8.

8 See the Anti-terrorism, Crime and Security Act 2001 s 15.

UPDATE

549 Power of the Treasury to make freezing orders

NOTE 3--See also *Ahmed v HM Treasury*; *al-Ghabra v HM Treasury*; *R (on the application of Youssef) v HM Treasury* [2010] UKSC 2, [2010] 2 WLR 378, [2010] All ER (D) 179 (Jan).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/ (viii) Gang-related Violence (Injunctions)/550. Purpose of injunctions.

(viii) Gang-related Violence (Injunctions)

550. Purpose of injunctions.

As from a day to be appointed¹ the court² may, pursuant to the prevention of gang-related violence³, grant an injunction for either or both of the purposes of:

- 1804 (1) prohibiting the respondent⁴ from doing anything described in the injunction⁵; or
- 1805 (2) requiring the respondent to do anything described in the injunction⁶.

The prohibitions included in such an injunction may, in particular, have the effect of prohibiting the respondent from:

- 1806 (a) being in a particular place (which includes an area)⁷;
- 1807 (b) being with particular persons in a particular place⁸;
- 1808 (c) being in charge of a particular species of animal in a particular place⁹;
- 1809 (d) wearing particular descriptions of articles of clothing in a particular place¹⁰;
- and
- 1810 (e) using the internet to facilitate or encourage violence¹¹.

The requirements included in such an injunction may, in particular, have the effect of requiring the respondent to:

- 1811 (i) notify the person who applied for the injunction of the respondent's address and of any change to that address¹²;
- 1812 (ii) be at a particular place between particular times on particular days¹³;
- 1813 (iii) present himself or herself to a particular person at a place where he or she is required to be between particular times on particular days¹⁴; and
- 1814 (iv) participate in particular activities between particular times on particular days¹⁵.

The prohibitions and requirements included in the injunction must, so far as practicable, be such as to avoid any conflict with the respondent's religious beliefs and any interference with the times, if any, at which the respondent normally works or attends any educational establishment¹⁶, and the injunction may not include a prohibition or requirement that has effect after the end of the period of two years beginning with the day on which the injunction is granted (the 'injunction date')¹⁷. The court may attach a power of arrest in relation to any prohibition in the injunction or any requirement in the injunction, other than one which has the effect of requiring the respondent to participate in particular activities¹⁸.

¹ At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-18; and PARAS 551-556) had yet to be brought into force.

² ie the High Court or a county court: Policing and Crime Act 2009 s 49(1) (not yet in force).

3 In the Policing and Crime Act 2009 s 34 'gang-related violence' means violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a group that:

894 (1) consists of at least three people (s 34(5)(a) (not yet in force));

895 (2) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group (s 34(5)(b) (not yet in force)); and

896 (3) is associated with a particular area (s 34(5)(c) (not yet in force)).

'Violence' includes violence against property: s 49(1) (not yet in force).

4 'Respondent' means the person in respect of whom an application for an injunction is made or (as the context requires) the person against whom such an injunction is granted: Policing and Crime Act 2009 s 49(1) (not yet in force).

5 Policing and Crime Act 2009 s 34(4)(a) (not yet in force).

6 Policing and Crime Act 2009 s 34(4)(b) (not yet in force).

7 Policing and Crime Act 2009 s 35(1), (2)(a), (7) (not yet in force).

8 Policing and Crime Act 2009 s 35(2)(b) (not yet in force).

9 Policing and Crime Act 2009 s 35(2)(c) (not yet in force).

10 Policing and Crime Act 2009 s 35(2)(d) (not yet in force).

11 Policing and Crime Act 2009 s 35(2)(e) (not yet in force).

12 Policing and Crime Act 2009 s 35(3)(a) (not yet in force).

13 Policing and Crime Act 2009 s 35(3)(b) (not yet in force). A requirement of this kind may not be such as to require the respondent to be at a particular place for more than eight hours in any day: s 35(4) (not yet in force). Nothing in s 34(2) or (3) affects the generality of s 34(4): s 35(6) (not yet in force).

14 Policing and Crime Act 2009 s 35(3)(c) (not yet in force).

15 Policing and Crime Act 2009 s 35(3)(d) (not yet in force).

16 Policing and Crime Act 2009 s 35(5) (not yet in force).

17 Policing and Crime Act 2009 s 36(1), (2) (not yet in force).

18 Policing and Crime Act 2009 s 36(6) (not yet in force). If the court attaches a power of arrest it may specify that the power is to have effect for a shorter period than the prohibition or requirement to which it relates: s 36(7) (not yet in force). 'Specify', in relation to an injunction, means specify in the injunction: s 49(1) (not yet in force).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/ (viii) Gang-related Violence (Injunctions)/551. Applications for, and granting of, injunctions.

551. Applications for, and granting of, injunctions.

As from a day to be appointed¹ a court² may grant an injunction for the prevention of gang-related violence³ if it:

- 1815 (1) is satisfied on the balance of probabilities that the respondent⁴ has engaged in, or has encouraged or assisted, gang-related violence⁵; and
 1816 (2) thinks it is necessary to grant the injunction for either or both of the purposes of preventing the respondent from engaging in, or encouraging or assisting, gang-related violence or protecting the respondent from gang-related violence⁶.

An application for an injunction may be made by the chief officer of police for a police area, the chief constable of the British Transport Police Force or a local authority⁷. Before applying for an injunction⁸ the applicant must consult any local authority, and any chief police officer, that the applicant thinks it appropriate to consult⁹, and any other body or individual that the applicant thinks it appropriate to consult¹⁰, although an application may be made without the respondent being given notice¹¹.

1 At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-11; and PARAS 550, 552-556) had yet to be brought into force.

2 As to the meaning of 'court' see PARA 560 note 41.

3 Ie an injunction under the Policing and Crime Act 2009 s 34 (see the text and notes 4-6; and PARA 550). Rules of court may provide that any power conferred on a county court to grant, vary or discharge an injunction under Pt 5 (ss 34-50) may be exercised by a judge or district judge of that court: s 48(1) (not yet in force). At the date at which this volume states the law no such rules had been made.

4 As to the meaning of 'respondent' see PARA 550 note 2.

5 Policing and Crime Act 2009 s 34(1), (2) (not yet in force). As to the meanings of 'gang-related violence' and 'violence' see PARA 550 note 3.

6 Policing and Crime Act 2009 s 34(3) (not yet in force).

7 Policing and Crime Act 2009 s 37(1) (not yet in force). Each of those officers or bodies must have regard to any guidance published under s 47(5) (see PARA 556): s 47(6) (not yet in force). In Pt 5 'local authority' means: in relation to England, a district council, a county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly (s 37(2)(a) (not yet in force)); and in relation to Wales, a county council or a county borough council (s 37(2)(b) (not yet in force)). As to the counties in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the counties and county boroughs in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq.

8 Ie under the Policing and Crime Act 2009 s 37 (see the text and note 7).

9 Policing and Crime Act 2009 s 38(1), (2)(a) (not yet in force).

10 Policing and Crime Act 2009 s 38(2)(b) (not yet in force).

11 Policing and Crime Act 2009 s 39(1) (not yet in force). Such an application is referred to as an application without notice: s 39(2) (not yet in force). Section 38(1) (see the text and notes 8-11) does not apply in relation

to an application without notice: s 39(3) (not yet in force). If an application without notice is made the court must either dismiss the application or adjourn the proceedings (s 39(4) (not yet in force)), and if the court acts to adjourn proceedings the applicant must comply with the consultation requirement before the date of the first full hearing (s 39(5) (not yet in force)). In s 39 'full hearing' means a hearing of which notice has been given to the applicant and respondent in accordance with rules of court: s 39(6) (not yet in force).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/ (viii) Gang-related Violence (Injunctions)/552. Interim injunctions.

552. Interim injunctions.

As from a day to be appointed¹ if the court² adjourns the hearing of an application for an injunction for the prevention of gang-related violence³ and the respondent⁴ was notified of the hearing in accordance with rules of court⁵, the court may grant an interim injunction⁶ if it thinks that it is just and convenient to do so⁷. The court may also grant an interim injunction if it thinks that it is necessary to do so where an application without notice is made⁸ and the proceedings are adjourned (otherwise than at a full hearing)⁹. An interim injunction under these provisions may include any provision which the court has power to include in an injunction¹⁰, including a power of arrest¹¹.

1 At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-11; and PARAS 550-551, 553-556) had yet to be brought into force.

2 As to the meaning of 'court' see PARA 560 note 41.

3 Ie an injunction under the Policing and Crime Act 2009 s 34 (see PARAS 550, 551). As to the meanings of 'gang-related violence' and 'violence' see PARA 550 note 3.

4 As to the meaning of 'respondent' see PARA 550 note 2.

5 Policing and Crime Act 2009 s 40(1) (not yet in force).

6 Any reference in the Policing and Crime Act 2009 Pt 4 to an injunction under Pt 4 includes a reference to an interim injunction: s 49(2) (not yet in force). Rules of court may provide that an appeal from a decision of the High Court or county court from a decision to refuse to grant an interim injunction under s 41 may be made without notice being given to the respondent: s 48(2), (3) (not yet in force). At the date at which this volume states the law no such rules had been made.

7 Policing and Crime Act 2009 s 40(2) (not yet in force).

8 Ie by virtue of the Policing and Crime Act 2009 s 39 (see PARA 551).

9 Policing and Crime Act 2009 s 41(1), (2) (not yet in force). As to the meaning of 'full hearing' see PARA 551 note 11 (definition applied by s 41(1) (not yet in force)). An interim injunction under s 41 may not have the effect of requiring the respondent to participate in particular activities: s 41(3) (not yet in force).

10 See note 3.

11 Policing and Crime Act 2009 ss 40(3), 41(4) (not yet in force). In the case of an injunction under s 41 this is subject to s 41(3) (see note 9).

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553. Reviews of injunctions.

As from a day to be appointed¹ the court² may order the applicant³ and the respondent⁴ in proceedings for an injunction for the prevention of gang-related violence⁵ to attend one or more review hearings on a specified⁶ date or dates⁷. A review hearing is a hearing held for the purpose of considering whether the injunction should be varied or discharged⁸. If any prohibition or requirement in the injunction is to have effect after the end of the period of one year beginning with day on which the injunction is granted, the court must order the applicant and the respondent to attend a review hearing on a specified date within the last four weeks of the one-year period (whether or not the court orders them to attend any other review hearings)⁹.

1 At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-9; and PARAS 550-552, 554-556) had yet to be brought into force.

2 As to the meaning of 'court' see PARA 560 note 41.

3 As to applicants for these purposes see PARA 551.

4 As to the meaning of 'respondent' see PARA 550 note 2.

5 Ie an injunction under the Policing and Crime Act 2009 s 34 (see PARAS 550, 551). As to the meanings of 'gang-related violence' and 'violence' see PARA 550 note 3.

6 As to the meaning of 'specified' see PARA 550 note 18.

7 Policing and Crime Act 2009 s 36(1), (3) (not yet in force).

8 Policing and Crime Act 2009 s 36(5) (not yet in force).

9 Policing and Crime Act 2009 s 36(4) (not yet in force).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/ (viii) Gang-related Violence (Injunctions)/554. Variation and discharge of injunctions.

554. Variation and discharge of injunctions.

As from a day to be appointed¹ the court² may vary or discharge an injunction for the prevention of gang-related violence³ if a review hearing is held⁴ or an application to vary or discharge the injunction is made⁵. An application to vary or discharge the injunction may be made by the person who applied for the injunction⁶ or the respondent⁷, and the power to vary an injunction includes power to include an additional prohibition or requirement in the injunction⁸, to extend the period for which a prohibition or requirement in the injunction has effect⁹, and to attach a power of arrest or extend the period for which a power of arrest attached to the injunction has effect¹⁰.

1 At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-10; and PARAS 550-553, 555-556) had yet to be brought into force.

2 As to the meaning of 'court' see PARA 560 note 41. Rules of court may provide that any power conferred on a county court to grant, vary or discharge an injunction under Pt 5 (ss 34-50) may be exercised by a judge or district judge of that court: s 48(1) (not yet in force). At the date at which this volume states the law no such rules had been made.

3 I.e. an injunction under the Policing and Crime Act 2009 Pt 4. As to the meanings of 'gang-related violence' and 'violence' see PARA 550 note 3.

4 As to review hearings see PARA 553.

5 Policing and Crime Act 2009 s 42(1) (not yet in force).

6 As to applicants for these purposes see PARA 551. Before applying for the variation or discharge of an injunction such a person must notify the persons consulted under s 38(1) or s 39(5) (see PARA 551): s 42(5) (not yet in force).

7 Policing and Crime Act 2009 s 42(2) (not yet in force). As to the meaning of 'respondent' see PARA 550 note 2.

8 As to prohibitions and requirements see PARA 550. Section 36(4) (compulsory attendance at review hearings: see PARA 553) does not apply where an injunction is varied to include a prohibition or requirement which is to have effect as mentioned in that provision but the variation is made within (or at any time after) the period of four weeks mentioned in it: s 42(4) (not yet in force).

9 I.e. subject to the Policing and Crime Act 2009 s 36(2) (see PARA 550).

10 Policing and Crime Act 2009 s 42(3) (not yet in force).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(viii) Gang-related Violence (Injunctions)/555. Arrest and remand.

555. Arrest and remand.

As from a day to be appointed¹ if a power of arrest is attached to a provision of an injunction for the prevention of gang-related violence² a constable may arrest without warrant a person whom the constable has reasonable cause to suspect to be in breach of the provision³, and the arrested person must be brought before a relevant judge⁴ within the period of 24 hours beginning with the time of the arrest⁵. If the matter is not disposed of when the person is brought before the judge, the judge may remand the person⁶.

If the person who applied for the injunction considers that the respondent⁷ is in breach of any of its provisions he may apply to a relevant judge for the issue of a warrant for the arrest of the respondent⁸: however a relevant judge may not issue a warrant on such an application unless the judge has reasonable grounds for believing that the respondent is in breach of any provision of the injunction⁹. If a person is brought before a court by virtue of such a warrant but the matter is not disposed of, the court may remand the person¹⁰.

If a person is brought before the relevant judge or the court under these provisions¹¹ and the judge or court has reason to consider that a medical report will be required, the judge or court may remand the person¹² for the purpose of enabling a medical examination to take place and a report to be made¹³, and if the judge or court has reason to suspect that the person is suffering from a mental disorder¹⁴ the judge or court has the same power to make an order¹⁵ remanding the accused for a report on his medical condition as the Crown Court has¹⁶ in the case of an accused person¹⁷.

1 At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-17; and PARAS 550-554, 556) had yet to be brought into force.

2 Ie an injunction under the Policing and Crime Act 2009 Pt 4. As to the meanings of 'gang-related violence' and 'violence' see PARA 550 note 3. As to the attaching of powers of arrest see PARA 550.

3 Policing and Crime Act 2009 s 43(1), (2) (not yet in force). If a constable arrests a person under s 43(2) he must inform the person who applied for the injunction: s 43(3) (not yet in force).

4 In the Policing and Crime Act 2009 Pt 4 'relevant judge', in relation to an injunction, means a judge of the High Court (where the injunction was granted by that court) or a judge or district judge of any county court (where the injunction was granted by a county court): s 43(7) (not yet in force).

5 Policing and Crime Act 2009 s 43(4) (not yet in force). In calculating when the period of 24 hours mentioned in s 34(4) ends, Christmas Day, Good Friday and any Sunday are to be disregarded: s 43(6) (not yet in force).

6 Policing and Crime Act 2009 s 43(5) (not yet in force). Where the court (ie the High Court or a county court) has power to remand a person under s 43(5) or s 44(4) (see the text and note 10) the court may remand the person in custody (ie commit the person to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require) (Sch 5 paras 1(1), (2), 2(1)(a) (not yet in force)) or remand the person on bail (Sch 5 para 2(1)(b) (not yet in force)). The court may remand the person on bail by taking from him a recognisance, with or without sureties (Sch 5 para 2(2)(a) (not yet in force)), and the court may direct that the person's recognisance be conditioned for the person's appearance before that court at the end of the period of remand (Sch 5 para 3(1)(a) (not yet in force)) or at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned (Sch 5 para 3(1)(b) (not yet in force)): where a recognisance is conditioned for a person's appearance as mentioned in Sch 5 para 3(1)(b) the fixing of any time for the person next to appear is to be treated as a remand (Sch 5 para 3(2) (not yet in force)). Nothing in Sch 5 para 3 affects the power of the court at any subsequent hearing to remand the person afresh: Sch 5 para 3(3) (not yet in force). The court may also remand the person on bail by fixing the amount of the

recognisances with a view to their being taken subsequently and, in the meantime, committing the person to custody as mentioned in Sch 5 para 2(1)(a) (see above) (Sch 5 para 2(2)(b) (not yet in force)): where the court so fixes the amount in which the principal and the sureties, if any, are to be bound, the recognisance may afterwards be taken by such person as may be prescribed by rules of court, with the same consequences as if it had been entered into before the court (Sch 5 para 6 (not yet in force)).

Where a person is brought before the court after remand the court may further remand the person: Sch 5 para 2(3) (not yet in force). The court may not, however, remand a person for a period exceeding eight clear days unless the person is remanded on bail and both that person and the person who applied for the injunction consent to a longer period (Sch 5 para 4(1)(a) (not yet in force)): where the court has power to remand a person in custody it may, if the remand is for a period not exceeding three clear days, commit the person to the custody of a constable (Sch 5 para 4(1)(b) (not yet in force)).

If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period of remand the court may, in the absence of the person, further remand the person (Sch 5 para 5(1) (not yet in force)): this power may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognisance and those of any sureties for the person to a later time (Sch 5 para 5(2) (not yet in force)). Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under Sch 5 para 5(1) the court may (in the person's absence) enlarge the person's recognisance and those of any sureties for the person to a later time, the enlargement of the person's recognisance being treated as a further remand: Sch 5 para 5(3), (4) (not yet in force). Sch 5 para 4(1) (limit of remand: see above) does not apply to the exercise of the powers conferred by Sch 5 para 5: Sch 5 para 5(5) (not yet in force).

The court may when remanding a person on bail under Sch 5 require the person to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice: Sch 5 para 7 (not yet in force).

In Sch 5 'court' includes a judge of the High Court (in relation to the court) and a judge or district judge of a county court (in relation to that court): Sch 5 para 1(2)(a), (b) (not yet in force).

7 As to the meaning of 'respondent' see PARA 550 note 2.

8 Policing and Crime Act 2009 s 44(1), (2) (not yet in force).

9 Policing and Crime Act 2009 s 44(3) (not yet in force).

10 Policing and Crime Act 2009 s 44(4) (not yet in force). As to remands see Sch 5; and note 6.

11 Ie under the Policing and Crime Act 2009 s 43 or s 44: see the text and notes 1-10.

12 Ie under the Policing and Crime Act 2009 s 43(5) or (as the case may be) s 44(4): see the text and notes 6, 10.

13 Policing and Crime Act 2009 s 45(1), (2) (not yet in force). If the person is remanded in custody for the purpose of enabling a medical examination to take place and a report to be made the adjournment may not be for more than three weeks at a time; and if the person is remanded on bail for that purpose the adjournment may not be for more than four weeks at a time: s 45(3) (not yet in force).

14 Ie within the meaning of the Mental Health Act 1983: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 417.

15 Ie under the Mental Health Act 1983 s 35: see PARA 335.

16 See note 15.

17 Policing and Crime Act 2009 s 45(5) (not yet in force). As to the meaning of 'accused person' see the Mental Health Act 1983 s 35(2); and PARA 335 note 1 (definition applied by the Policing and Crime Act 2009 s 45(5) (not yet in force)).

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556. Guidance and review.

As from a day to be appointed¹ the Secretary of State must issue guidance relating to injunctions² for the prevention of gang-related violence³ and may revise any guidance so issued⁴. Before issuing or revising any such guidance the Secretary of State must consult the Lord Chief Justice of England and Wales and such other persons as the Secretary of State thinks appropriate⁵. The Secretary of State must lay any guidance so issued or revised before Parliament⁶ and must publish any guidance so issued or revised⁷.

As from a day to be appointed⁸ the Secretary of State must review the operation of the provisions governing injunctions for the prevention of gang-related violence⁹ and must prepare and publish a report on the outcome of the review¹⁰.

1 At the date at which this volume states the law the Policing and Crime Act 2009 Pt 4 (ss 34-50) (see the text and notes 2-10; and PARAS 550-555) had yet to be brought into force.

2 I.e. injunctions under the Policing and Crime Act 2009 Pt 4.

3 Policing and Crime Act 2009 s 47(1) (not yet in force). As to the meanings of 'gang-related violence' and 'violence' see PARA 550 note 3. As to the attaching of powers of arrest see PARA 550.

4 Policing and Crime Act 2009 s 47(2) (not yet in force).

5 Policing and Crime Act 2009 s 47(3) (not yet in force).

6 Policing and Crime Act 2009 s 47(4) (not yet in force).

7 Policing and Crime Act 2009 s 47(5) (not yet in force).

8 See note 1.

9 I.e. the Policing and Crime Act 2009 Pt 4: see PARAS 550-555.

10 Policing and Crime Act 2009 s 50(1) (not yet in force). The report must be laid before Parliament and must be published before the end of the period of three years beginning with the day on which Pt 4 comes into force: s 50(2), (3) (not yet in force).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(ix) Notification Requirements and Orders (Sexual Offences)/A. NOTIFICATION REQUIREMENTS/557. The notification requirements and relevant offenders.

(ix) Notification Requirements and Orders (Sexual Offences)

A. NOTIFICATION REQUIREMENTS

557. The notification requirements and relevant offenders.

Provision is made for persons convicted of or cautioned for a range of sexual offences against children to be required to provide the local police with specified information about themselves¹. There are two categories of offender who may be subject to the notification requirements (referred to as 'relevant offenders'): those becoming subject to the requirements on or after 1 May 2004² and those subject to the requirements before that date³. In either case, a person is subject to the notification requirements if he is or was convicted of or cautioned for a relevant offence⁴, found not guilty of such an offence by reason of insanity, or found to be under a disability and to have done the act charged against him in respect of such an offence, and continues to be subject to the requirements for a specified period (the 'notification period'), the length of which is determined by the sentence he is given⁵.

Provision is made for the assessment and management of the risks posed by persons who are subject to the notification requirements and other persons who, by reason of offences committed by them, are considered by the responsible authority to be persons who may cause serious harm to the public⁶.

1 This provision has effect under the Sexual Offences Act 2003 Pt 2 (ss 80-136), which re-enacted with amendments the scheme originally having effect under the Sex Offenders Act 1997 Pt 1 (ss 1-6) (repealed as from 1 May 2004). For the matters required to be notified, and the means of notification, see PARA 563 et seq.

The police, as a public authority, may publish such information only if it is in the public interest and there is a pressing need to do so, and they must obtain as much information regarding the matter as is reasonably possible before taking such a highly sensitive decision: *R v Chief Constable of the North Wales Police, ex p Thorpe* [1999] QB 396, sub nom *R v Chief Constable of the North Wales Police, ex p AB* [1998] 3 All ER 310, CA.

The notification requirements under the Sexual Offences Act 2003 Pt 2 do not impose any obligation other than the requirements set out in PARA 563 et seq, nor do they have any other effect: eg they do not automatically disqualify someone from holding a passenger-carrying vehicle driving licence (see *Secretary of State for Transport, Local Government and the Regions v Snowdon* [2002] EWHC 2394 (Admin), [2003] RTR 216, [2002] 47 LS Gaz R 29).

2 Ie the date on which the Sexual Offences Act 2003 Pt 2 was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874. As to these offenders see PARA 558.

3 Ie under the Sex Offenders Act 1997 Pt 1 (repealed as from 1 May 2004). As to these offenders see PARA 559.

4 As to the offences in respect of which the notification requirements may arise see the Sexual Offences Act 2003 Sch 3; and PARA 560.

5 As to the notification period see PARA 561.

6 See the Criminal Justice Act 2003 ss 325, 326, 327(1), (2), 327A, 327B.

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558. Persons becoming subject to notification requirements on or after 1 May 2004.

A person is subject to the notification requirements¹ for the duration of the notification period² (that is to say, he is a 'relevant offender'³) if after 1 May 2004⁴:

- 1817 (1) he is convicted of a listed offence⁵;
- 1818 (2) he is found not guilty of such an offence by reason of insanity⁶;
- 1819 (3) he is found to be under a disability and to have done the act charged against him in respect of such an offence⁷; or
- 1820 (4) in England and Wales or Northern Ireland, he is cautioned⁸ in respect of such an offence⁹.

1 For the matters required to be notified, and the means of notification, see PARA 563 et seq.

2 As to the notification period see PARA 561. The notification requirement system applies automatically and is, therefore, not part of the system of penalties and is irrelevant to the sentencing exercise; consequently, it would be wrong, for example, to reduce a sentence in order that the offender is subject to the notification requirement for a shorter period: *A-G's Reference (No 50 of 1997)* [1998] 2 Cr App Rep (S) 155, CA. However, placing an offender on the sex offenders register indefinitely without a mechanism for review is a disproportionate interference with the right to respect for private and family life under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (prohibition of retrospective laws: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq): *R (on the application of JF) v Secretary of State for the Home Department* [2009] EWCA Civ 792 (Admin), 153 Sol Jo (No 30) 29, [2009] All ER (D) 250 (Jul).

The notification requirement is not an order of the court but a consequence that flows automatically from certain convictions and sentence; however, the court by or before which an offender is convicted may inform the offender of any notification requirement which applies as a consequence of such conviction provided that this is not done in a way which appears to make such information part of the sentence or to clothe it with the authority of a further order by the sentencing court: *R v Longworth* [2006] UKHL 1, [2006] 1 All ER 887, [2006] 2 Cr App Rep (S) 401. Special provision is made in respect of young offenders: see PARA 569.

3 Sexual Offences Act 2003 ss 80(2), 133(1).

4 Ie the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874.

5 Sexual Offences Act 2003 ss 80(1)(a), 133(1). As to the meaning of 'conviction' see PARA 363 note 2. As to the offences in respect of which the notification requirements may arise see Sch 3; and PARA 560.

6 Sexual Offences Act 2003 s 80(1)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

7 Sexual Offences Act 2003 s 80(1)(c). As to a reference to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

8 As to the meaning of 'cautioned' see PARA 534 note 11.

9 Sexual Offences Act 2003 s 80(1)(d).

UPDATE

558 Persons becoming subject to notification requirements on or after 1 May 2004

NOTE 2--*JF*, cited, affirmed sub nom *R (on the application of F) (a child)) v Secretary of State for the Home Department; R (on the application of Thompson) v Secretary of State for the Home Department*: [2010] UKSC 17, [2010] 2 WLR 992, [2010] All ER (D) 123 (Apr).

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559. Persons subject to notification requirements under former legislation.

A person is subject to the notification requirements¹ from 1 May 2004² until the end of the notification period³ (that is to say, he is a 'relevant offender'⁴) if before that date:

- 1821 (1) he was convicted⁵ of a listed offence⁶;
- 1822 (2) he was found not guilty of such an offence by reason of insanity⁷;
- 1823 (3) he was found to be under a disability and to have done the act charged against him in respect of such an offence⁸; or
- 1824 (4) in England and Wales or Northern Ireland, he was cautioned⁹ in respect of such an offence¹⁰.

A person who, immediately before 1 May 2004, was subject to a restraining order, a sex offender order or an interim order under any of the former statutory provisions imposing notification requirements on a person¹¹, is subject to the notification requirements as from that date until the order is discharged or otherwise ceases to have effect¹². Special provision is made in respect of young offenders¹³ and persons who are subject to the notification requirements as a result of a conviction, finding or caution for buggery or gross indecency prior to the abolition of criminal liability for consensual homosexual acts with 16- or 17-year olds¹⁴.

1 For the matters required to be notified, and the means of notification, see PARA 563 et seq.

2 Ie the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874.

3 As to the notification period see PARA 561. These provisions do not apply to a person whose notification period ended before 1 May 2004: Sexual Offences Act 2003 s 81(2).

4 Sexual Offences Act 2003 s 80(2).

5 As to the meaning of 'conviction' see PARA 363 note 2. Note, however, that 'conviction' in the present context does not include a conviction in respect of which the offender receives a conditional discharge: see *R v Longworth* [2006] UKHL 1, [2006] 1 All ER 887, [2006] 2 Cr App Rep (S) 401.

6 Sexual Offences Act 2003 s 81(1)(a). As to the offences in respect of which the notification requirements may arise see Sch 3; and PARA 560. This provision does not apply to a conviction before 1 September 1997 (ie the date on which the Sex Offenders Act 1997 was brought into force by the Sex Offenders Act 1997 (Commencement) Order 1999, SI 1997/1920) unless, at the beginning of that day, the person had not been dealt with in respect of the offence (s 81(3)(a)), or was serving a sentence of imprisonment, or was subject to a community order, in respect of the offence (s 81(3)(b) (amended by the Armed Forces Act 2006 Sch 16 para 206, Sch 17)), or was subject to supervision, having been released from prison after serving the whole or part of a sentence of imprisonment in respect of the offence (Sexual Offences Act 2003 s 81(3)(c)), or was detained in a hospital or was subject to a guardianship order, following the conviction (s 81(3)(d)). A person who would have been within s 81(3)(b) or s 81(3)(d) but for the fact that at the beginning of 1 September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is treated as being within that provision: s 81(6).

'Imprisonment' is to be construed in accordance with the provisions applying the notification requirements to young offenders serving periods of detention: see s 131; and PARA 562. 'Community order' means a community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 as it had effect before 20 November 2003 (ie the date on which the Criminal Justice Act 2003 received the Royal Assent), a corresponding Scottish or Northern Irish order, or a community supervision order under the Army Act 1955 Sch 5A para 4, the Air Force Act 1955 Sch 5A para 4 or the Naval Discipline Act 1957 Sch 4A para 4 (see **ARMED FORCES** vol 2(2)).

(Reissue) PARA 435): Sexual Offences Act 2003 s 133(1) (amended by the Criminal Justice Act 2003 Sch 32 paras 142, 144). 'Supervision' means supervision in pursuance of an order made for the purpose or, in the case of a person released from prison on licence, in pursuance of a condition contained in his licence: s 133(1). 'Detained in a hospital' means detained in a hospital under the Mental Health Act 1983 Pt III (ss 35-55) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 486 et seq) (or corresponding Scottish or Northern Irish provisions) (including those provisions as they apply by virtue of the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA 40), the Criminal Appeal Act 1968 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1883) or s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1889), the Armed Forces Act 2006 Sch 4 (see **ARMED FORCES**) (including as applied by the Court Martial Appeals Act 1968 s 16(2) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 544)) the Army Act 1955 s 116A, the Air Force Act 1955 s 116A, or the Naval Discipline Act 1957 s 63A (see **ARMED FORCES** vol 2(2) (Reissue) PARA 500), or the Courts-Martial (Appeals) Act 1968 s 16 or s 23 (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 544-545)), or the Mental Health Act 1983 s 46 (repealed), the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 Sch 1 (repealed), or the Criminal Procedure (Insanity) Act 1964 Sch 1 (repealed) (or its Scottish counterpart): Sexual Offences Act 2003 ss 133(1), (1A), 135(4)(a)(i) (s 133(1) amended, and s 133(1A) added, by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 57(1)-(3); Sexual Offences Act 2003 s 133(1A) amended by the Armed Forces Act 2006 Sch 16 para 209). 'Guardianship order' means a guardianship order under the Mental Health Act 1983 s 37 (see PARA 332; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491) or corresponding Scottish or Northern Irish provisions: Sexual Offences Act 2003 s 133(1).

The Secretary of State may exempt a relevant offender who is subject to the notification requirements arising from the former offence of buggery or gross indecency (ie arising from a conviction, finding or caution in respect of an offence under the Sexual Offences Act 1956 s 12 (repealed) or s 13 (repealed) or a conviction, finding or caution for incitement, conspiracy or attempt to commit such an offence or for aiding, abetting, counselling or procuring the commission of the offence (Sexual Offences Act 2003 Sch 4 para 6(1)), or corresponding Northern Irish offences, from those requirements on the basis of the abolition of criminal liability for consensual homosexual acts with 16-year olds: see Sch 4 para 1. The offender may apply to the Secretary of State for a decision as to whether it appears that, at the time of the offence, the other party to the act of buggery or gross indecency (or, in the case of an attempt, conspiracy or incitement, to the act of buggery or gross indecency to which the attempt, conspiracy or incitement related (whether or not that act occurred) (Sch 4 para 6(2)) was aged 16 or over and consented to the act (Sch 4 para 2(1)(a)), and if the Secretary of State decides that it appears that the other party to the act was aged 16 or over and consented to it, the offender ceases, from the beginning of the day on which the decision is recorded, to be subject to the requirements of Pt 2 as a result of the conviction, finding or caution in respect of the offence (Sch 4 para 4(1)). This does not affect the operation of Pt 2 as a result of any other conviction, finding, caution or any court order: Sch 4 para 4(2). If the Secretary of State decides, however, that it does not so appear, and if the High Court gives permission, the offender may appeal to that court (Sch 4 para 5(1)), which may either decide that it does so appear and make an order that the offender is to cease to be subject to the notification requirements as a result of the conviction, finding or caution in respect of the offence (Sch 4 para 5(3)(a), (4)) or dismiss the appeal (Sch 4 para 5(3)(b)). There is no appeal from the decision of the High Court: Sch 4 para 5(5). The court may not receive oral evidence on an appeal: Sch 4 para 5(2).

An application for exemption must be in writing and state the name, address and date of birth of the relevant offender (Sch 4 para 2(2)(a)), his name and address at the time of the conviction, finding or caution (Sch 4 para 2(2)(b)), the time when and the place where the conviction or finding was made or the caution was given, so far as known to him (Sch 4 para 2(2)(c)) and, for a conviction or finding, the case number, and such other information as the Secretary of State may require (Sch 4 para 2(2)(d)). An application may include representations by the offender about the other party's consent to the act: Sch 4 para 2(3). In making the decision applied for, the Secretary of State must consider any representations included in the application (Sch 4 para 3(1)(a)) and any available record of the investigation of the offence and of any proceedings relating to it that appears to him to be relevant (Sch 4 para 3(1)(b)), but is not to seek evidence from any witness (Sch 4 para 3(1)). On making the decision the Secretary of State must record it in writing (Sch 4 para 3(2)(a)) and give notice in writing to the relevant offender (Sch 4 para 3(2)(b)).

7 Sexual Offences Act 2003 s 81(1)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31. This provision, and the provision made by s 81(1)(c) (see the text and note 8) does not apply to a finding made before 1 September 1997 unless at the beginning of that day the person in question either had not been dealt with in respect of the finding (s 81(4)(a)) or was detained in a hospital following the finding (s 81(4)(b)). A person who would have been within s 81(4)(b) but for the fact that at the beginning of 1 September 1997 he was unlawfully at large or absent without leave, on temporary release or leave of absence, or on bail pending an appeal, is treated as being within that provision: s 81(6).

8 Sexual Offences Act 2003 s 81(1)(c). See note 7. As to references to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

9 See PARA 534 note 11.

10 Sexual Offences Act 2003 s 81(1)(d). This provision does not apply to a caution given before 1 September 1997: s 81(5).

11 Is an order under the Sex Offenders Act 1997 s 5A, the Crime and Disorder Act 1998 s 2 or s 2A (all repealed), or the Scottish or Northern Irish counterpart of these orders: Sexual Offences Act 2003 s 81(8)(a)-(f).

12 Sexual Offences Act 2003 s 81(7). Despite their partially retrospective effect, the notification requirements are preventive rather than punitive in nature and therefore do not constitute a 'penalty' for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) art 7 (prohibition of retrospective laws: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 148): *Ibbotson v United Kingdom* [1999] Crim LR 153, (1998) 27 EHRR CD 332, ECtHR. The notification requirements clearly interfere with the right to privacy under the Convention for the Protection of Human Rights and Fundamental Freedoms art 8 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq), but that interference is likely to be accepted as necessary and proportionate to prevent crime: *Adamson v United Kingdom* (1999) 28 EHRR CD 209, EComHR.

13 See PARA 562.

14 See note 6.

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560. Listed offences.

The offences in respect of which the notification requirements arise¹ are:

- 1825 (1) rape²;
- 1826 (2) assault by penetration³;
- 1827 (3) sexual assault⁴;
- 1828 (4) causing a person to engage in sexual activity without consent⁵;
- 1829 (5) rape of a child aged under 13⁶;
- 1830 (6) assault of a child aged under 13 by penetration⁷;
- 1831 (7) sexual assault of a child aged under 13⁸;
- 1832 (8) causing or inciting a child under 13 to engage in sexual activity⁹;
- 1833 (9) sexual activity with a child¹⁰;
- 1834 (10) causing or inciting a child to engage in sexual activity¹¹;
- 1835 (11) engaging in sexual activity in the presence of a child¹²;
- 1836 (12) causing a child to watch a sexual act¹³;
- 1837 (13) child sex offences committed by children or young persons¹⁴;
- 1838 (14) arranging or facilitating the commission of a child sex offence¹⁵;
- 1839 (15) meeting a child following sexual grooming¹⁶;
- 1840 (16) any of the offences involving abuse of a position of trust¹⁷;
- 1841 (17) any familial child sex offence¹⁸;
- 1842 (18) any sexual offences against mentally disordered persons (including offences by care workers)¹⁹;
- 1843 (19) paying for the sexual services of a child²⁰;
- 1844 (20) causing or inciting child prostitution or pornography²¹;
- 1845 (21) controlling a child prostitute or a child involved in pornography²²;
- 1846 (22) arranging or facilitating child prostitution or pornography²³;
- 1847 (23) administering a substance, committing an offence or trespassing with intent to commit a sexual offence²⁴;
- 1848 (24) sex with an adult relative²⁵;
- 1849 (25) exposure²⁶;
- 1850 (26) voyeurism²⁷;
- 1851 (27) intercourse with an animal²⁸;
- 1852 (28) sexual penetration of a corpse²⁹;
- 1853 (29) possession of extreme pornographic images³⁰;
- 1854 (30) the offences relating to the taking, possession etc of indecent photographs of children³¹; and
- 1855 (31) certain customs offences relating to the prohibited importation of indecent or obscene articles³².

The notification requirements also arise in respect of a number of statutory offences which no longer have effect³³.

A reference in this list to an offence includes a reference to any attempt, conspiracy or incitement of another to commit³⁴, and to aiding, abetting, counselling or procuring the commission of³⁵, any of the offences in respect of which the notification requirements arise, and also includes a reference to an offence under the statutory provisions relating to the

encouragement or assistance of crime³⁶ in relation to which the listed offence is the offence (or one of the offences) which the person intended or believed would be committed³⁷. Provision is also made in respect of corresponding service offences³⁸ and Scottish³⁹ and Northern Irish⁴⁰ offences.

If the court⁴¹ by or before which a person is convicted of a listed offence⁴² or is the subject of a finding of not guilty by reason of insanity⁴³ or of being under a disability and to have done the act charged against him in respect of an offence⁴⁴ states in open court⁴⁵ that on that date he has been convicted, found not guilty by reason of insanity or found to be under a disability and to have done the act charged against him⁴⁶, and that the offence in question is a listed offence⁴⁷, and certifies those facts, whether at the time or subsequently⁴⁸, the certificate is evidence of those facts⁴⁹ for these purposes⁵⁰. Where a person is cautioned in respect of a listed offence, and the constable informs the person that he has been cautioned on that date and that the offence in question is a listed offence⁵¹ and certifies those facts, whether at the time or subsequently, in such form as the Secretary of State by order prescribes⁵², the certificate is evidence of those facts for these purposes⁵³.

1 As to the circumstances in which the notification requirements arise in respect of an offender see PARAS 558-559. For the matters required to be notified and the means of notification see PARA 563 et seq.

2 Ie an offence under the Sexual Offences Act 2003 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 165) (ss 80(1)(a), 81(1)(a), Sch 3 para 17) or under the Sexual Offences Act 1956 s 1 (repealed) (Sexual Offences Act 2003 Sch 3 paras 1, 17).

3 Ie an offence under the Sexual Offences Act 2003 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 167): Sch 3 para 17.

4 Ie under the Sexual Offences Act 2003 s 3 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 169): Sch 3 para 18. The notification requirements arise in respect of this offence and the offences under ss 62, 63, 66, 67 (see the text and notes 24, 26, 27) if:

897 (1) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months (Sch 3 paras 18(a), 31(a), 33(a), 34(a)); or

898 (2) in any other case, the victim was under 18 (Sch 3 paras 18(b)(i), 33(b)(i), 34(b)(i)) (or, in the case of an offence under s 62 or s 63, the intended offence was an offence against a person aged under 18 (Sch 3 para 31(b)(i))) or the offender, in respect of the offence or finding, is or has been sentenced to a term of imprisonment (Sch 3 paras 18(b)(ii)(a), 31(b)(ii)(a), 33(b)(ii)(a), 34(b)(ii)(a)), detained in a hospital (Sch 3 paras 18(b)(ii)(b), 31(b)(ii)(b), 33(b)(ii)(b), 34(b)(ii)(b)), or made the subject of a community sentence of at least 12 months (Sch 3 paras 18(b)(ii)(c), 31(b)(ii)(c), 33(b)(ii)(c), 34(b)(ii)(c)).

For this purpose 'imprisonment' is to be construed in accordance with the provisions applying the notification requirements to young offenders serving periods of detention: see s 131; and PARA 562. In general, a reference to a person's age is a reference to his age at the time of the offence: Sch 3 para 95(b). As to proof of age see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1470. See also the Children and Young Persons Act 1933 s 99(2) (which provides that where a charge or indictment alleges that a person in respect of whom an offence has been committed is under a specified age, there is a rebuttable presumption that the person is under that age); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1243. As to the meaning of 'detained in a hospital' see PARA 559 note 6. As to the meaning of 'community sentence' see the Powers of Criminal Courts (Sentencing) Act 2000 s 33(2); and PARA 163 et seq (definition applied by the Sexual Offences Act 2003 Sch 3 para 96(a)). The former offences involving indecent assaults on men and women are also notifiable: see note 33.

5 Ie an offence under the Sexual Offences Act 2003 s 4 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 171): Sch 3 para 19.

6 Ie an offence under the Sexual Offences Act 2003 s 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 166): Sch 3 para 19. The former offences involving intercourse with girls under 16 are also notifiable: see note 33.

7 Ie an offence under the Sexual Offences Act 2003 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 168): Sch 3 para 19. See note 6.

8 le an offence under the Sexual Offences Act 2003 s 7 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 170): Sch 3 para 20. The notification requirements arise in respect of this offence and the offences under ss 14, 25, 26, 47-50 (see the text and notes 15, 18, 20-23) if the offender either was 18 or over (Sch 3 paras 20(a), 23(a), 26(a), 29(a), 29A(a), 29B(a), 29C(a) (Sch 3 paras 29A-29C added by SI 2007/296)) or is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months (Sexual Offences Act 2003 Sch 3 para 20(b), 23(b), 26(b), 29(b), 29A(b), 29B(b), 29C(b) (as so added)). The former offences involving indecent conduct towards a young child are also notifiable: see note 33.

The Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2007, SI 2007/296, was made under the Sexual Offences Act 2003 s 130, pursuant to which the Secretary of State may by order amend the list of offences in respect of which the notification requirements arise: s 130(1). Any such amendment which either adds an offence (s 130(4)(a)), removes a threshold relating to an offence (s 130(4)(b)) or changes a threshold in such a way as to cause an offence committed by or against a person of a particular age or in certain circumstances, or resulting in a particular disposal, to be within Sch 3 when it would not otherwise be (s 130(4)(c)) does not apply to convictions, findings and cautions (see PARA 534 note 11) before the amendment takes effect (s 130(2)).

9 le an offence under the Sexual Offences Act 2003 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 172): Sch 3 para 21.

10 le an offence under the Sexual Offences Act 2003 s 9 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 173): Sch 3 para 21.

11 le an offence under the Sexual Offences Act 2003 s 10 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 174): Sch 3 para 21.

12 le an offence under the Sexual Offences Act 2003 s 11 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 175): Sch 3 para 21.

13 le an offence under the Sexual Offences Act 2003 s 12 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 176): Sch 3 para 21.

14 le an offence under the Sexual Offences Act 2003 s 13 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 177): Sch 3 para 22. The notification requirements arise in respect of this offence if the offender is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months: Sch 3 para 22.

15 le an offence under the Sexual Offences Act 2003 s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 178): Sch 3 para 23. As to the circumstances under which the notification requirements arise in respect of this offence see note 8. The former offences involving causing or encouraging the prostitution of, intercourse with, or indecent assault on, a girl under 16 are also notifiable: see note 33.

16 le an offence under the Sexual Offences Act 2003 s 15 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 179): Sch 3 para 24.

17 le an offence under the Sexual Offences Act 2003 ss 16-19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 180-183): Sch 3 para 25. The notification requirements arise in respect of these offences if the offender, in respect of the offence, is or has been sentenced to a term of imprisonment (Sch 3 para 25(a)), detained in a hospital (Sch 3 para 25(b)), or made the subject of a community sentence of at least 12 months (Sch 3 para 25(c)).

18 le an offence under the Sexual Offences Act 2003 ss 25, 26 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 191): Sch 3 para 26. As to the circumstances under which the notification requirements arise in respect of this offence see note 8. The former offences involving incest by a man and inciting a girl under 16 to have incestuous sexual intercourse are also notifiable: see note 33.

19 le an offence under the Sexual Offences Act 2003 ss 30-41 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 197-214): Sch 3 paras 27, 28. The notification requirements arise in respect of the offences under ss 38-41 (ie the offences which may be committed by care workers) if: (1) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months (Sch 3 para 28(a)); or (2) in any other case, either the victim was under 18 (or the offender, in respect of the offence or finding, is or has been sentenced to a term of imprisonment (Sch 3 para 28(b)(i)), detained in a hospital (Sch 3 para 28(b)(ii)), or made the subject of a community sentence of at least 12 months (Sch 3 para 28(b)(iii)).

20 le an offence under the Sexual Offences Act 2003 s 47 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 215): Sch 3 para 29. As to the circumstances under which the notification requirements arise in respect of this offence see note 8.

21 le an offence under the Sexual Offences Act 2003 s 48 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216): Sch 3 para 29A (as added: see note 8). As to the circumstances under which the notification requirements arise in respect of this offence see note 8.

22 le an offence under the Sexual Offences Act 2003 s 49 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216): Sch 3 para 29A (as added: see note 8). As to the circumstances under which the notification requirements arise in respect of this offence see note 8.

23 le an offence under the Sexual Offences Act 2003 s 50 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 216): Sch 3 para 29A (as added: see note 8). As to the circumstances under which the notification requirements arise in respect of this offence see note 8.

24 le an offence under the Sexual Offences Act 2003 ss 61-63 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 230-232): Sch 3 paras 30, 31. As to the circumstances in which the notification requirements arise in respect of the offences under ss 62, 63 (ie the offences of committing an offence or trespassing with intent to commit a sexual offence) see note 4.

25 le an offence under the Sexual Offences Act 2003 ss 64, 65 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 188-190): Sch 3 para 32. The notification requirements arise in respect of these offences and the offence under ss 69, 70 (see the text and notes 28, 29) if: (1) where the offender was under 18, he is or has been sentenced, in respect of the offence, to imprisonment for a term of at least 12 months (Sch 3 paras 32(a), 35(a)); or (2) in any other case, in respect of the offence or finding, the offender is or has been sentenced to a term of imprisonment (Sch 3 paras 32(b)(i), 35(b)(i)) or detained in a hospital (Sch 3 paras 32(b)(ii), 35(b)(ii)).

26 le an offence under the Sexual Offences Act 2003 s 66 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 233): Sch 3 para 33. As to the circumstances in which the notification requirements arise in respect of this offence see note 4.

27 le an offence under the Sexual Offences Act 2003 s 67 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 234): Sch 3 para 34. As to the circumstances in which the notification requirements arise in respect of this offence see note 4.

28 le an offence under the Sexual Offences Act 2003 s 69 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 235): Sch 3 para 35. As to the circumstances in which the notification requirements arise in respect of this offence see note 25.

29 le an offence under the Sexual Offences Act 2003 s 70 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 236): Sch 3 para 35. As to the circumstances in which the notification requirements arise in respect of this offence see note 25.

30 le an offence under the Criminal Justice and Immigration Act 2008 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): Sexual Offences Act 2003 Sch 3 para 35A (added by the Criminal Justice and Immigration Act 2008 Sch 26 paras 53, 58). The notification requirements arise in respect of this offence if the offender was 18 or over and is sentenced in respect of the offence to imprisonment for a term of at least two years: Sexual Offences Act 2003 Sch 3 para 35A (as so added).

31 le an offence under the Protection of Children Act 1978 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 757) or the Criminal Justice Act 1988 s 160 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 758) or, as from a day to be appointed, the Coroners and Justice Act 2009 s 62(1) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**): Sexual Offences Act 2003 Sch 3 paras 13, 15, 35B (Sch 3 para 35B prospectively added by the Coroners and Justice Act 2009 Sch 21 para 62(1), (2)). The notification requirements arise in respect of the offences under the Protection of Children Act 1978 s 1, the Criminal Justice Act 1988 s 160 and the offence under the Customs and Excise Management Act 1979 s 170 (see the text and note 32) if (in the case of the offences specifically relating to photography and pseudo-photography) the indecent photographs or pseudo-photographs showed persons under 16 (Sexual Offences Act 2003 Sch 3 paras 13, 15) and either the conviction, finding or caution was before 1 May 2004 (ie the date on which Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874) (Sexual Offences Act 2003 Sch 3 paras 13(a), 14(a), 15(a)) or the offender was aged 18 or over (Sch 3 paras 13(b)(i), 14(b)(i), 15(b)(i)) or is sentenced in respect of the offence to imprisonment for a term of at least 12 months (Sch 3 paras 13(b)(ii), 14(b)(ii), 15(b)(ii)), and the notification requirements arise in respect of the offence under the Coroners and Justice Act 2009 s 62(1) if the offender was 18 or over and is sentenced in respect of the offence to imprisonment for a term of at least two years (Sexual Offences Act 2003 Sch 3 para 35B (as so prospectively added)). In the case of an indecent photograph, a reference to a person's age is a reference to his age when the photograph was taken (Sch 3 para 95(a)); and, for the purposes of Sch 3 para 14, a person is to be taken to have been under 16 at any time if it appears from the evidence as a whole that he was under that age at that time (Sch 3 para 97(a)). As to the meanings of 'photograph', 'indecent photograph' and 'pseudo-photograph' see the Protection of Children Act 1978 s 7; and **CRIMINAL LAW, EVIDENCE AND**

PROCEDURE vol 11(2) (2006 Reissue) PARA 757 (definitions applied for these purposes by the Sexual Offences Act 2003 Sch 3 para 97(b)).

32 le an offence under the Customs and Excise Management Act 1979 s 170 (penalty for fraudulent evasion of duty etc: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1178) in relation to goods prohibited from importation under the Customs Consolidation Act 1876 s 42 (repealed) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16: Sexual Offences Act 2003 Sch 3 para 14(a). As to the circumstances in which the notification requirements arise in respect of this offence see note 31.

33 le, in addition to the offence of rape under the Sexual Offences Act 1956 s 1 (repealed) (see the text and note 2), the offences of intercourse with a girl aged under 13 (see s 5 (repealed)) or, where the offender is aged 20 or over, under 16 (see s 6 (repealed)), incest by a man (if the victim or (as the case may be) other party was under 18) (see s 10 (repealed)), buggery or indecency between men (if the offender was aged 20 or over and the victim or (as the case may be) other party was under 18) (see ss 12, 13 (both repealed)), indecent assault on a woman or man (if the victim or (as the case may be) other party was under 18, or if the offender, in respect of the offence or finding, is or has been either sentenced to imprisonment for a term of at least 30 months or admitted to hospital subject to a restriction order) (see ss 14, 15 (both repealed)), assault with intent to commit buggery (if the victim or (as the case may be) other party was under 18) (see s 16 (repealed)), causing or encouraging the prostitution of, intercourse with, or indecent assault on, a girl under 16 (see s 28 (repealed)), indecent conduct towards a young child (see the Indecency with Children Act 1960 s 1 (repealed)), and inciting a girl under 16 to have incestuous sexual intercourse (see the Criminal Law Act 1977 s 54 (repealed)): see the Sexual Offences Act 2003 Sch 3 paras 1-12. Note that men who are subject to the notification requirements as a result of a conviction, finding or caution for buggery or gross indecency contrary to the Sexual Offences Act 1956 ss 12, 13 (repealed) can apply for exemption from those requirements on the basis of the abolition of criminal liability for consensual homosexual acts with 16- or 17-year olds: see the Sexual Offences Act 2003 Sch 4; and PARA 559 note 6.

34 Sexual Offences Act 2003 Sch 3 para 94(a). This does not, however, include an attempt to incite the commission of an offence: see *R v Parnell* [2004] EWCA Crim 2523, [2005] 1 WLR 853 (case concerned with identical terminology in the Sex Offenders Act 1997 Sch 1 para 5(1) (repealed)).

35 Sexual Offences Act 2003 Sch 3 para 94(b).

36 le the Serious Crime Act 2007 Pt 2 (ss 44-67) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

37 Sexual Offences Act 2003 Sch 3 para 94A (added by the Serious Crime Act 2007 Sch 6 para 63(1), (2)).

38 le an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70 or the Naval Discipline Act 1957 s 42 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 422) of which the corresponding civil offence (within the meaning of those Acts: see **ARMED FORCES** vol 2(2) (Reissue) PARA 422) is an offence listed in any of heads (1)-(31) in the text (Sexual Offences Act 2003 Sch 3 para 93(1) (amended by the Criminal Justice and Immigration Act 2008 Sch 26 para 58(4); prospectively amended by the Coroners and Justice Act 2009 Sch 21 para 62(5))), and an offence under the Armed Forces Act 2006 s 42 (see **ARMED FORCES**) as respects which the corresponding offence under the law of England and Wales (within the meaning given by s 42) is an offence listed in any of heads (1)-(31) in the text (Sexual Offences Act 2003 Sch 3 para 93A(1) (Sch 3 para 93A added by the Armed Forces Act 2006 Sch 16 para 212; amended by the Serious Crime Act 2007 Sch 5 para 4(1), (2); prospectively amended by the Coroners and Justice Act 2009 Sch 21 para 62(5))). The Armed Forces Act 2006 s 48 (attempts, conspiracy, encouragement and assistance and aiding and abetting outside England and Wales: see **ARMED FORCES**) applies with modifications for the purposes of the Sexual Offences Act 2003 Sch 3 para 93A: Sch 3 para 93A(3) (as so added and amended).

In the context of offences against the Army Act 1955 s 70, the Air Force Act 1955 s 70 or the Naval Discipline Act 1957 s 42, a reference in the text and notes to being made the subject of a community sentence of at least 12 months is to be read as a reference to being sentenced to a term of detention of at least 112 days (Sexual Offences Act 2003 Sch 3 para 93(2) (amended by the Armed Forces Act 2006 Sch 16 para 212, Sch 17)), and in the context of offences under the Armed Forces Act 2006 s 42, such a reference is to be read as a reference to being made the subject of a service community order or overseas community order under the Armed Forces Act 2006 of at least 12 months or being sentenced to a term of service detention of at least 112 days (Sexual Offences Act 2003 Sch 3 para 93A(2) (as so added)). In the context of offences against the Army Act 1955 s 70, the Air Force Act 1955 s 70 or the Naval Discipline Act 1957 s 42, the reference to detention is to detention awarded under the Army Act 1955 s 71(1)(e), the Air Force Act 1955 s 71(1)(e) or the Naval Discipline Act 1957 s 43(1)(e): Sexual Offences Act 2003 Sch 3 para 93(3) (added by the Armed Forces Act 2006 Sch 16 para 212).

In the Sexual Offences Act 2003 a reference to a court order or a conviction or finding includes a reference to an order of or a conviction or finding by a service court (ie a court-martial or standing civilian court) (s 137(1)(a), (4)), a reference to an 'offence' includes a reference to an offence triable by a service court (s 137(1)(b)), 'proceedings' includes proceedings before a service court (s 137(1)(c)), and a reference to proceedings for an offence under the Sexual Offences Act 2003 includes a reference to proceedings for a corresponding offence

under the Armed Forces Act 2006 s 42 (see the Sexual Offences Act 2003 s 137(1)(d) (amended by the Armed Forces Act 2006 Sch 16 para 211)).

39 See the Sexual Offences Act 2003 Sch 3 paras 36-60.

40 See the Sexual Offences Act 2003 Sch 3 paras 61-92.

41 For these purposes, 'court' includes a 'service court' (ie the Court Martial and the Service Civilian Court): Sexual Offences Act 2003 s 137(2), (4) (s 137(4) amended by the Armed Forces Act 2006 Sch 16 para 211).

42 Sexual Offences Act 2003 s 92(1)(a). As to the meaning of 'conviction' see PARA 363 note 2.

43 Sexual Offences Act 2003 s 92(1)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

44 Sexual Offences Act 2003 s 92(1)(c). As to references to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

45 As to the meaning of 'open court' see PARA 23 note 3.

46 Sexual Offences Act 2003 s 92(2)(a)(i).

47 Sexual Offences Act 2003 s 92(2)(a)(ii).

48 Sexual Offences Act 2003 s 92(2)(b).

49 Sexual Offences Act 2003 s 92(2).

50 Ie for the purposes of the Sexual Offences Act 2003 Pt 2.

51 Sexual Offences Act 2003 s 92(3), (4)(a).

52 Sexual Offences Act 2003 s 92(4)(b). At the date at which this volume states the law no such order had been made.

53 Sexual Offences Act 2003 s 92(4). See note 52.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(ix) Notification Requirements and Orders (Sexual Offences)/A. NOTIFICATION REQUIREMENTS/561. The notification period.

561. The notification period.

The notification period for a person in respect of whom the notification requirements arise¹:

- 1856 (1) in the case of a person who, in respect of the offence, is or has been sentenced to imprisonment for life, imprisonment for public protection² or imprisonment for a term³ of 30 months or more, is an indefinite period beginning with the relevant date⁴;
- 1857 (2) in the case of a person who, in respect of the offence or finding, is or has been admitted to a hospital⁵ subject to a restriction order⁶, is an indefinite period beginning with the relevant date⁷;
- 1858 (3) in the case of a person who, in respect of the offence, is or has been sentenced to imprisonment for a term of more than six months but less than 30 months, is ten years (or five years if he is under 18 on the relevant date) beginning with the relevant date⁸;
- 1859 (4) in the case of a person who, in respect of the offence, is or has been sentenced to imprisonment for a term of six months or less, is seven years (or three and a half years if he is under 18 on the relevant date) beginning with the relevant date⁹;
- 1860 (5) in the case of a person who, in respect of the offence or finding, is or has been admitted to a hospital without being subject to a restriction order, is seven years (or three and a half years if he is under 18 on the relevant date) beginning with the relevant date¹⁰;
- 1861 (6) in the case of a person who has been cautioned in respect of the offence¹¹, is two years (or one year if he is under 18 on the relevant date) beginning with the relevant date¹²;
- 1862 (7) in the case of a person in whose case an order for conditional discharge is made in respect of the offence, is the period of conditional discharge¹³; and
- 1863 (8) in the case of a person of any other description, is five years (or two and a half years if the person is under 18 at the relevant date) beginning with the relevant date¹⁴.

Where a relevant offender¹⁵ is or has been sentenced in respect of two or more listed offences¹⁶ to consecutive terms of imprisonment¹⁷, these provisions have effect as if he was or had been sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of those terms¹⁸; and where a relevant offender is or has been sentenced in respect of two or more such offences to partly concurrent terms of imprisonment¹⁹, these provisions have effect as if he was or had been sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the partly concurrent terms minus the period of overlap²⁰.

Where a relevant offender who has been found to have been under a disability and to have done the act charged against him in respect of a listed offence²¹ is subsequently tried for the offence, the notification period relating to the finding ends at the conclusion of the trial²².

¹ As to the circumstances in which the notification requirements arise in respect of an offender see PARAS 558-559. As to the offences in respect of which the notification requirements may arise see Sch 3; and PARA 560.

These provisions apply also to a person who is subject to a notification order by virtue of a conviction for an offence committed overseas: see the Sexual Offences Act 2003 s 98(1)(a), (3)(a); and PARA 573. As to the meaning of 'conviction' see PARA 363 note 2.

2 ie under the Criminal Justice Act 2003 s 225: see PARAS 73, 74.

3 Where an offender has been sentenced to an extended term of imprisonment under the Powers of Criminal Courts (Sentencing) Act 2000 s 85 (repealed) the term for which he is to be regarded as 'sentenced to imprisonment' for these purposes is the 'custodial term' element of the extended sentence, and not the whole length of the extended term: *R v S* [2001] 1 Cr App Rep (S) 335, CA. In the case of an extended sentence under the Criminal Justice Act 2003 s 227 or s 228 (see PARAS 75, 84) the term for which a person is to be regarded as 'sentenced to imprisonment' for these purposes is the whole term.

4 Sexual Offences Act 2003 s 82(1) (amended by the Violent Crime Reduction Act 2006 s 57(1)). The 'relevant date' is:

- 899 (1) in the case of a person within the Sexual Offences Act 2003 s 80(1)(a) or s 81(1)(a) (see PARAS 558-559), the date of conviction (ss 82(6)(a), 133(1));
- 900 (2) in the case of a person within s 80(1)(b) or (c) or s 81(1)(b) or (c) (see PARAS 558-559), the date of the finding (s 82(6)(b));
- 901 (3) in the case of a person within s 80(1)(d) or s 81(1)(d) (see PARAS 558-559), the date of the caution (s 82(6)(c)); and
- 902 (4) in the case of a person within s 81(7) (see PARA 559), the date which, for the purposes of the Sex Offenders Act 1997 Pt 1 (ss 1-6) (repealed as from 1 May 2004), was the relevant date in relation to that person (Sexual Offences Act 2003 s 82(6)(d)).

Where an offence is listed in Sch 3 (see PARA 560) subject to a condition relating to the way in which the defendant is dealt with in respect of the offence or (where a relevant finding has been made in respect of him) in respect of the finding (a 'sentencing condition') (s 132(1)), a person is to be regarded as convicted of such an offence (s 132(3)(a)) or (as the case may be) a relevant finding in relation to such an offence is regarded as made (s 132(3)(b)) at the time when the sentencing condition is met (s 132(3)). A 'relevant finding' is a finding that a person is not guilty of the offence by reason of insanity (see s 132(9)(a); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31) or a finding that a person is under a disability and did the act charged against him in respect of the offence (see s 132(9)(b); and PARA 360 note 5). Where an offence is listed if either a sentencing condition or a condition of another description is met, this requirement applies only to the offence as listed subject to the sentencing condition: s 132(2). Where the offence in question is a foreign offence (ie an act which constituted an offence under the law in force in a country outside the United Kingdom (the 'relevant foreign law') (s 132(4)(a)) and would have constituted an offence subject to a sentencing condition (but not any other offence listed in Sch 3) if it had been done in any part of the United Kingdom (s 132(4)(b)), a person is regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Sch 3 as it applies to the corresponding United Kingdom offence (s 132(6)). In relation to a foreign offence, references to the corresponding United Kingdom offence are references to the offence (or any offence) to which s 132(4)(b) applies in the case of that foreign offence: s 132(5). Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is for these purposes to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Sch 3 as it applies to the corresponding United Kingdom offence: s 132(7). 'Country' includes territory: s 133(1). As to the meaning of 'United Kingdom' see PARA 9 note 2. As from a day to be appointed the Magistrates' Courts Act 1980 s 127 (time limits: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589) does not apply to a complaint under any provision of the Sexual Offences Act 2003 (ss 80-136): s 132A (prospectively added by the Policing and Crime Act 2009 s 22(1), (2)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment (which is applicable in relation to a complaint made after that day even if the matter of complaint arose more than six months before the making of the complaint: see s 22(4) (not yet in force)).

Placing an offender on the sex offenders register indefinitely without a mechanism for review is a disproportionate interference with the right to respect for private and family life under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (prohibition of retrospective laws: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq): *R (on the application of JF) v Secretary of State for the Home Department* [2009] EWCA Civ 792 (Admin), 153 Sol Jo (No 30) 29, [2009] All ER (D) 250 (Jul).

5 For these purposes, 'admitted to a hospital' means admitted to a hospital under the Mental Health Act 1983 s 37 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491) (or its Scottish or Northern Irish counterparts) (including those provisions as they apply by virtue of the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA

40), the Criminal Appeal Act 1968 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1883) or s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1889), the Armed Forces Act 2006 Sch 4 (see **ARMED FORCES**) (including as applied by the Court Martial Appeals Act 1968 s 16(2) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 544)) the Army Act 1955 s 116A, the Air Force Act 1955 s 116A, or the Naval Discipline Act 1957 s 63A (see **ARMED FORCES** vol 2(2) (Reissue) PARA 500), or the Courts-Martial (Appeals) Act 1968 s 16 or s 23 (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 544-545)), or the Mental Health Act 1983 s 46 (repealed), the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 Sch 1 (repealed), or the Criminal Procedure (Insanity) Act 1964 Sch 1 (repealed) (or its Scottish counterpart): Sexual Offences Act 2003 ss 133(1), (1A), 135(4)(a)(i) (s 133(1) amended, and s 133(1A) added, by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 57(1), (2); Sexual Offences Act 2003 s 133(1A) amended by the Armed Forces Act 2006 Sch 16 para 209).

6 'Restriction order' means an order under the Mental Health Act 1983 s 41 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 496) (or its Scottish or Northern Irish counterparts) (including those provisions as they apply by virtue of the Criminal Procedure (Insanity) Act 1964 s 5 (see PARA 40), the Criminal Appeal Act 1968 s 6 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1883) or s 14 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1889), the Armed Forces Act 2006 Sch 4 (see **ARMED FORCES**) (including as applied by the Court Martial Appeals Act 1968 s 16(2) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 544)), the Army Act 1955 s 116A, the Air Force Act 1955 s 116A, or the Naval Discipline Act 1957 s 63A (see **ARMED FORCES** vol 2(2) (Reissue) PARA 500), or the Courts-Martial (Appeals) Act 1968 s 16 or s 23 (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 544-545)), or a direction under the Mental Health Act 1983 s 46 (repealed) or the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 Sch 1 para 2(1)(b) (repealed) (or its Scottish counterpart): Sexual Offences Act 2003 ss 133(1), (1A), 135(4)(a)(i) (s 133(1) amended, and s 133(1A) added, by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 57(1), (2); Sexual Offences Act 2003 s 133(1A) amended by the Armed Forces Act 2006 Sch 16 para 209).

7 Sexual Offences Act 2003 s 82(1).

8 Sexual Offences Act 2003 s 82(1), (2). Additional provision is made in connection with young offenders: see PARA 562.

9 Sexual Offences Act 2003 s 82(1), (2).

10 Sexual Offences Act 2003 s 82(1), (2).

11 Is a person within the Sexual Offences Act 2003 s 80(1)(d) (see PARA 558): s 82(1).

12 Sexual Offences Act 2003 s 82(1), (2).

13 Sexual Offences Act 2003 s 82(1). As to the meanings of 'order for conditional discharge' and 'period of conditional discharge' see the Powers of Criminal Courts (Sentencing) Act 2000 s 12(3) (see PARA 40), the Armed Forces Act 2006 s 185 (see **ARMED FORCES**), and the Army Act 1955 Sch 5A para 2(1), the Air Force Act 1955 Sch 5A para 2(1), and the Naval Discipline Act 1957 Sch 4A para 2(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 435) (definitions applied by the Sexual Offences Act 2003 s 133(1) (amended by the Armed Forces Act 2006 Sch 16 para 209)).

14 Sexual Offences Act 2003 s 82(1), (2).

15 Is a relevant offender for the purposes of the Sexual Offences Act 2003 s 80(1)(a) or s 81(1)(a) (see PARAS 558-559).

16 See PARA 560.

17 Sexual Offences Act 2003 s 82(3)(a).

18 Sexual Offences Act 2003 s 82(4)(a).

19 Sexual Offences Act 2003 s 82(3)(b).

20 Sexual Offences Act 2003 s 82(4)(b).

21 Is he has been the subject of a finding within the Sexual Offences Act 2003 s 80(1)(c) or s 81(1)(c) (see PARAS 558-559).

22 Sexual Offences Act 2003 s 82(5).

UPDATE

561 The notification period

NOTE 4--*JF*, cited, affirmed sub nom *R (on the application of F) (a child)) v Secretary of State for the Home Department; R (on the application of Thompson) v Secretary of State for the Home Department*: [2010] UKSC 17, [2010] 2 WLR 992, [2010] All ER (D) 123 (Apr).

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562. The notification period: young offenders.

The statutory provisions imposing notification requirements on persons convicted of or cautioned¹ for sexual offences² also apply, as they apply to an equivalent sentence of imprisonment³, to:

- 1864 (1) a period of detention which a person is liable to serve under a detention and training order⁴ or a secure training order⁵;
- 1865 (2) a period for which a person is ordered to be detained in residential accommodation⁶;
- 1866 (3) a sentence of detention in a young offender institution⁷;
- 1867 (4) a sentence under a custodial order⁸ in respect of certain persons who are subject to the service discipline Acts⁹;
- 1868 (5) a sentence of detention at Her Majesty's pleasure or for a specified period¹⁰;
- 1869 (6) a sentence of custody for life¹¹;
- 1870 (7) a sentence of detention or custody for life under the service discipline Acts¹²;
- 1871 (8) a sentence of detention for public protection¹³; and
- 1872 (9) an extended sentence¹⁴.

1 As to the meaning of 'conviction' see PARA 363 note 2. As to 'cautioned' see PARA 534 note 11.

2 Ie the Sexual Offences Act 2003 Pt 2 (ss 80-136).

3 References in the Sexual Offences Act 2003 Pt 2 are to be construed accordingly: s 131.

4 As to detention and training orders see PARA 89 et seq. This includes an order under the Armed Forces Act 2006 s 211 (see **ARMED FORCES**): Sexual Offences Act 2003 s 131(a) (s 131(a), (h), (k), (l) amended by the Armed Forces Act 2006 Sch 16 para 208). The notification period in respect of a person subject to a detention and training order is governed by the length only of the detention and training period in the order, and not by reference to the entire term of the order: see *R v Slocombe* [2005] EWCA Crim 2297, [2006] 1 All ER 670, [2006] 1 WLR 328.

5 Sexual Offences Act 2003 s 131(a) (as amended: see note 4). Secure training orders were formerly made under the Criminal Justice and Public Order Act 1994 s 1 (repealed).

6 Sexual Offences Act 2003 s 131(b). The reference in the text to a person being ordered to be detained in residential accommodation is a reference to being ordered to be so detained under the Criminal Procedure (Scotland) Act 1995 s 44(1).

7 Sexual Offences Act 2003 s 131(f). Provision for imposing sentences of detention in young offender institutions is made by the Powers of Criminal Courts (Sentencing) Act 2000 ss 96-98: see PARA 85.

8 Ie within the meaning of the Army Act 1955 s 71AA or Sch 5A para 10(1), the Air Force Act 1955 s 71AA or Sch 5A para 10(1), or the Naval Discipline Act 1957 s 43AA or Sch 4A para 10(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 431-432).

9 Sexual Offences Act 2003 s 131(g). As to the service discipline Acts see **ARMED FORCES** vol 2(2) (Reissue) PARA 302.

10 Sexual Offences Act 2003 s 131(h) (as amended: see note 4). As to these sentences see the Powers of Criminal Courts (Sentencing) Act 2000 ss 90, 91; and PARA 81, 78; and the Armed Forces Act 2006 ss 209, 218; and **ARMED FORCES**.

11 Sexual Offences Act 2003 s 131(i). As to these sentences see the Powers of Criminal Courts (Sentencing) Act 2000 ss 93, 94; and PARA 79.

12 Sexual Offences Act 2003 s 131(j). As to such sentences see the Army Act 1955 s 71A, the Air Force Act 1955 s 71A, and the Naval Discipline Act 1957 s 43A; and **ARMED FORCES** vol 2(2) (Reissue) PARA 431.

13 Sexual Offences Act 2003 s 131(k) (s 131(k), (l) added by the Criminal Justice Act 2003 Sch 32 paras 142, 143; as amended (see note 4)). As to such sentences see the Criminal Justice Act 2003 s 226; and PARA 82: these include sentences of detention for public protection passed as a result of the Armed Forces Act 2006 s 221 (see **ARMED FORCES**).

14 Sexual Offences Act 2003 s 131(l) (as added and amended: see notes 4, 12). As to such sentences see the Criminal Justice Act 2003 s 228; and PARA 84: these include sentences of detention for public protection passed as a result of the Armed Forces Act 2006 s 222 (see **ARMED FORCES**).

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563. Initial notification.

A relevant offender¹ must, within the period of three days² beginning with the relevant date³, notify to the police⁴:

- 1873 (1) his date of birth⁵;
- 1874 (2) his national insurance number⁶;
- 1875 (3) his name on the relevant date and, where he used one or more other names on that date, each of those names⁷;
- 1876 (4) his home address⁸ on the relevant date⁹;
- 1877 (5) his name on the date on which notification is given¹⁰ and, where he uses one or more other names on that date, each of those names¹¹;
- 1878 (6) his home address on the date on which notification is given¹²;
- 1879 (7) the address of any other premises in the United Kingdom at which, at the time the notification is given, he regularly resides or stays¹³; and
- 1880 (8) any other information as may be prescribed by regulations made by the Secretary of State¹⁴.

Failure without reasonable excuse to comply with these requirements is an offence, as is notifying false information¹⁵.

1 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

2 When determining this period and the three- and six-day periods for the purposes of the Sexual Offences Act 2003 s 84 (see PARA 565) there is to be disregarded any time when the relevant offender is either remanded in or committed to custody by an order of a court or kept in service custody (Sexual Offences Act 2003 ss 83(6)(a), 84(5) (s 83(6)(a) amended by the Criminal Justice and Immigration Act 2008 Sch 26 paras 53, 54)), serving a prison sentence or a term of service detention (Sexual Offences Act 2003 s 83(6)(b)), detained in a hospital (s 83(6)(c)) or outside the United Kingdom (s 83(6)(d)). As to the meaning of 'detained in a hospital' see PARA 559 note 6. As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 As to the relevant date see PARA 561 note 4. For the circumstances in which initial notification need not be made see PARA 564.

4 As to the methods of notification see PARA 568.

5 Sexual Offences Act 2003 s 83(1), (5)(a).

6 Sexual Offences Act 2003 s 83(5)(b).

7 Sexual Offences Act 2003 s 83(5)(c).

8 'Home address' means the address of the relevant offender's sole or main residence in the United Kingdom (Sexual Offences Act 2003 ss 83(7)(a), 133(1)) or where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as the person may select (s 83(7)(b)).

9 Sexual Offences Act 2003 s 83(5)(d).

10 As to when notification is not required to be given see PARA 564.

11 Sexual Offences Act 2003 s 83(5)(e).

12 Sexual Offences Act 2003 s 83(5)(f).

13 Sexual Offences Act 2003 s 83(5)(g).

14 Sexual Offences Act 2003 s 83(5)(h), (5A) (added by the Criminal Justice and Immigration Act 2008 s 142(1), (11)). At the date at which this volume states the law no regulations had been made for these purposes.

15 See the Sexual Offences Act 2003 s 91(1); and PARA 570.

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564. Circumstances in which initial notification need not be given.

A relevant offender¹ who, as a result of an earlier conviction, finding, caution² or court order (the 'earlier event') was subject to the notification requirements³ immediately before a subsequent conviction, finding or caution⁴ is not required to comply with the initial notification requirements arising in respect of the subsequent matter⁵ if at that time he had made an initial notification⁶ in respect of the earlier event⁷ and throughout the initial notification period⁸ he remains subject to the notification requirements as a result of that event⁹. A relevant offender in relation to whom a notification order¹⁰ has been made in respect of any conviction, finding or caution¹¹, and a relevant offender who has complied with the former notification requirements¹² in respect of a previous conviction, finding, caution or order¹³, are similarly exempt.

1 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

2 See PARA 534 note 11.

3 Ie the requirements of the Sexual Offences Act 2003 Pt 2 (ss 80-136).

4 Sexual Offences Act 2003 s 83(2)(a). The text refers to a conviction, finding or caution falling within s 80(1) (see PARA 558). As to the meaning of 'conviction' see PARA 363 note 2.

5 Ie the requirements of the Sexual Offences Act 2003 s 83(1) (see PARA 563).

6 Ie under the Sexual Offences Act 2003 s 83(1) (see PARA 563).

7 Sexual Offences Act 2003 s 83(2)(b).

8 Ie the initial notification period under the Sexual Offences Act 2003 s 83(1) (see PARA 563).

9 Sexual Offences Act 2003 s 83(2)(c).

10 As to the meaning of 'notification order' see the Sexual Offences Act 2003 s 97(1); and PARA 573.

11 Sexual Offences Act 2003 s 83(4)(a)-(c).

12 Ie the Sex Offenders Act 1997 s 2(1) (repealed).

13 Sexual Offences Act 2003 s 83(3). The text refers to a conviction, finding or caution within s 81(1) or an order within s 81(7) (see PARA 559): s 83(3).

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565. Changes to be notified.

A relevant offender¹ who:

- 1881 (1) uses a name which has not been notified² to the police³;
- 1882 (2) changes his home address⁴;
- 1883 (3) has resided or stayed, for a period of seven days, or two or more periods in any 12-month period which taken together amount to seven days (a 'qualifying period'⁵) at any premises in the United Kingdom⁶ whose address has not been notified⁷ to the police⁸;
- 1884 (4) is released from custody pursuant to a court order or from imprisonment⁹, service detention or detention in a hospital¹⁰; or
- 1885 (5) has undergone any change occurring in relation to any matter in respect of which information is required¹¹ to be notified¹² and of a description prescribed by regulations made by the Secretary of State¹³,

must within three days¹⁴ beginning with such a change notify to the police that name, the new home address, the address of those premises or the prescribed details¹⁵, as the case may be, as well as the initial notification requirements¹⁶. A notification of a change may be given before a name is used, a change of home address or the prescribed change of circumstances occurs or the qualifying period ends, but in that case the relevant offender must also specify the date when the event is expected to occur¹⁷.

Failure without reasonable excuse to comply with the requirement to notify changes is an offence, as is giving false information when notifying a change¹⁸.

1 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

2 Ie under the Sexual Offences Act 2003 s 83(1) (see PARA 563), s 84(1) (see the text and notes 2-12) or the Sex Offenders Act 1997 s 2 (repealed): Sexual Offences Act 2003 s 84(1)(a).

3 Sexual Offences Act 2003 s 84(1)(a).

4 Sexual Offences Act 2003 s 84(1)(b). As to the meaning of 'home address' see PARA 563 note 8.

5 Sexual Offences Act 2003 s 84(6).

6 As to the meaning of 'United Kingdom' see PARA 9 note 2.

7 Ie under the Sexual Offences Act 2003 s 83(1) or s 84(1) or the Sex Offenders Act 1997 s 2 (repealed): Sexual Offences Act 2003 s 84(1)(c).

8 Sexual Offences Act 2003 s 84(1)(c).

9 'Imprisonment' is to be construed in accordance with the provisions applying the notification requirements to young offenders serving periods of detention: see the Sexual Offences Act 2003 s 131; and PARA 562.

10 Sexual Offences Act 2003 s 84(1)(d). As to the meaning of 'detained in a hospital' see PARA 559 note 6.

11 Ie by virtue of the Sexual Offences Act 2003 s 83(5)(h): see PARA 563.

12 Sexual Offences Act 2003 s 84(1)(ca), (5A)(a)(i) (s 84(1), (2) amended, s 84(1)(ca), (5A) added, by the Criminal Justice and Immigration Act 2008 s 142(1), (2)-(5), (11)).

13 Sexual Offences Act 2003 s 84(5A)(a)(ii) (as added: see note 12). At the date at which this volume states the law no regulations had been made for these purposes.

14 As to the determination of this period see PARA 563 note 2.

15 Ie, in relation to a prescribed change of circumstances, such details of the change as may be prescribed by regulations made by the Secretary of State: Sexual Offences Act 2003 s 84(5A)(b) (as added: see note 12). At the date at which this volume states the law no regulations had been made for these purposes.

16 Sexual Offences Act 2003 s 84(1) (as amended: see note 12). As to the initial notification requirements see s 83(5); and PARA 563. As to the methods of notification see PARA 568.

17 Sexual Offences Act 2003 s 84(2) (as amended: see note 12). However, if the event to which an advance notification relates occurs more than two days before the expected date specified in it, the notification does not affect the duty imposed by s 84(1): s 84(3). Moreover, if advance notification is given and the event to which it relates has not occurred by the end of the three-day period beginning with the expected date specified, the notification does not affect the duty imposed by s 84(1) (s 84(4)(a)) and the relevant offender must, within a six-day period beginning with the expected date specified, notify the police that the event did not occur within the three-day period beginning with the date specified (s 84(4)(b)). As to the determination of this six-day period see PARA 563 note 2. Failure without reasonable excuse to notify such non-occurrence is an offence: see s 91(1)(a); and PARA 570.

18 See the Sexual Offences Act 2003 s 91(1); and PARA 570.

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566. Periodic re-notification.

A relevant offender¹ who has given any initial notification², periodic re-notification³ or a notification of changes⁴ is required to notify to the police the information required to be notified⁵ on initial notification⁶. Such notification must be given within the applicable period⁷. A person who is a relevant offender from 1 May 2004⁸ is also required to notify to the police the information required to be notified⁹ on initial notification within the applicable period¹⁰.

These requirements do not apply where within the applicable period the offender has given¹¹ a notification of change¹²: otherwise failure without reasonable excuse to comply with the requirement for periodic notification is an offence, as is notifying false information when making a periodic notification¹³.

1 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

2 Sexual Offences Act 2003 s 85(2)(b). As to the giving of initial notifications see s 83(1); and PARA 563. As to the methods of notification see PARA 568.

3 Sexual Offences Act 2003 s 85(2)(c). As to the giving of periodic re-notifications see s 85(1); and the text and notes 4-12.

4 Sexual Offences Act 2003 s 85(2)(b). As to the notification of changes see s 84(1); and PARA 565.

5 The information required to be notified under the Sexual Offences Act 2003 s 83(5) (see PARA 563).

6 Sexual Offences Act 2003 s 85(1) (s 85(1), (3), (4) amended, s 85(5), (6) added, by the Criminal Justice and Immigration Act 2008 s 142(6)-(9), (11), Sch 26 paras 53, 55).

7 Sexual Offences Act 2003 s 85(1) (as amended: see note 6). For this purpose the applicable period is the period of one year, unless the last home address notified by the relevant offender under s 83(1), s 84(1) or s 85(1) was the address or location of such a place as is mentioned in s 83(7)(b), in which event the applicable period is such period as may be prescribed by regulations made by the Secretary of State: s 85(5), (6) (as so added). At the date at which this volume states the law no regulations had been made for these purposes.

If the applicable period would otherwise end while a relevant offender is remanded in or committed to custody by an order of a court or kept in service custody (s 85(4)(a) (as so amended)), or serving a sentence of imprisonment or a term of service detention (s 85(4)(b)) or detained in a hospital (s 85(4)(c)) or outside the United Kingdom (s 85(4)(d)), that period is treated as continuing until the end of the period of three days beginning when the offender first ceases to be so remanded, imprisoned, detained or abroad: s 85(3). For this purpose 'imprisonment' is to be construed in accordance with the provisions applying the notification requirements to young offenders serving periods of detention: see the Sexual Offences Act 2003 s 131; and PARA 562. As to the meaning of 'detained in a hospital' see PARA 559 note 6. As to the meaning of 'United Kingdom' see PARA 9 note 2.

8 The date mentioned in the text is the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874. As to the persons who are relevant offenders from that date see PARA 558.

9 See note 5.

10 Sexual Offences Act 2003 s 85(2)(a).

11 The information required to be notified under the Sexual Offences Act 2003 s 84(1): see PARA 565.

12 Sexual Offences Act 2003 s 85(1) (as amended: see note 6).

13 See the Sexual Offences Act 2003 s 91(1); and PARA 570.

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567. Travel outside the United Kingdom.

A relevant offender¹ who intends to leave the United Kingdom² for a period of three days or longer³ must give, before he leaves, a notification⁴ disclosing the date on which he will leave the United Kingdom⁵ and the country⁶ (or, if there is more than one, the first country) to which he will travel and his point of arrival⁷ in that country⁸. The notification must also disclose such information as the offender holds concerning his intended point of arrival in any additional country to which he intends to travel⁹, the identity of his intended carrier¹⁰, his initial accommodation arrangements¹¹, and his intended date of return¹² and point of arrival¹³. Where the offender knows the information whose disclosure is compulsory¹⁴ more than seven days before the date of his intended departure, he must give a notification which sets out that information and as much of the additional information¹⁵ as he holds not less than seven days before that date¹⁶ or, if and only if he has a reasonable excuse for not complying with this requirement, as soon as reasonably practicable but not less than 24 hours before that date¹⁷. Where the offender does not know the information whose disclosure is compulsory more than seven days before the date of his intended departure he must give, not less than 24 hours before that date, a notification which sets out that information and as much of the additional information as he holds¹⁸. If any of the information given in a notification changes prior to the offender's departure from the United Kingdom, he must give a further notification¹⁹.

An offender giving a notification of departure from or return to the United Kingdom must inform the person to whom he gives the notice of his name and other names he is using²⁰, his home address²¹, and his date of birth²², as currently notified²³, and an offender giving late notification of compulsory information before leaving the United Kingdom²⁴ must inform the person to whom he gives the notification of the police station at which he first gave a notification²⁵ in respect of the journey in question²⁶.

Where a relevant offender who is required to give a notification concerning travel abroad²⁷ has left the United Kingdom and subsequently returns, he must within three days of his return give a notification disclosing the date of his return and his point of arrival²⁸ unless he had previously disclosed this information²⁹ in his initial notification concerning his travel³⁰.

Failure without reasonable excuse to comply with any of these requirements is an offence, as is notifying false information³¹.

1 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

2 As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 5(1). The Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, are made under the Sexual Offences Act 2003 s 86, under which it is provided that specified matters concerning the notification requirements applicable to offenders who travel outside the United Kingdom are to be determined in accordance with regulations. As to the operation of the travel notification requirements in respect of a person who is subject to a foreign travel order see PARA 535.

4 As to the methods of notification see PARA 568.

5 Sexual Offences Act 2003 s 86(2)(a).

6 As to the meaning of 'country' see PARA 534 note 12.

7 In a case in which a relevant offender will arrive in a country by rail, sea or air, his point of arrival is the station, port or airport at which he will first disembark: Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 4(1), (2). Where he will arrive in a country by any other means his point of arrival is the place at which he will first enter the country: reg 4(3).

8 Sexual Offences Act 2003 s 86(2)(b).

9 Sexual Offences Act 2003 s 86(2)(c) (which provides that a notification under s 86 must disclose any other information prescribed by regulations which the offender holds about his departure from or return to the United Kingdom or his movements while outside the United Kingdom); Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6(a).

10 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6(b). The information required to be disclosed under reg 6(b) is the identity of any carrier or carriers the offender intends to use for the purposes of his departure from and return to the United Kingdom, and of traveling to any other point of arrival: reg 6(b).

11 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6(c). The information required to be disclosed under reg 6(c) is details of the offender's accommodation arrangements for his first night outside the United Kingdom: reg 6(c).

12 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6(d). This information need be given only if the offender intends to return to the United Kingdom on a particular date: reg 6(d).

13 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6(e). This information need be given only if the offender intends to return to the United Kingdom at a particular point of arrival: reg 6(e).

14 Ie the information required to be disclosed by the Sexual Offences Act 2003 s 86(2)(a), (b) (see the text and notes 1-8).

15 Ie the information required to be disclosed only where it is held by the offender (see the Sexual Offences Act 2003 s 86(2)(c); and the text and note 9).

16 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 5(2)(a). This is referred to as the 'seven-day notification requirement'.

17 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 5(2)(b).

18 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 5(3). This is referred to as the 'special case'.

19 See the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 7. This provides that where a relevant offender has given a notification under the Sexual Offences Act 2003 s 86(2) (see the text and notes 1-9) and at any time prior to his intended departure from the United Kingdom the information disclosed in that notification becomes inaccurate or incomplete as a statement of all the information mentioned in s 86(2)(a), (b) (see the text and notes 1-8) and the additional information under the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6 (see the text and notes 9-13) which he currently holds, he must, not less than 24 hours before his intended departure from the United Kingdom, give a further notification under the Sexual Offences Act 2003 s 86(2).

20 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(4)(a).

21 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(4)(b). As to the meaning of 'home address' see PARA 563 note 8.

22 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(4)(c).

23 Ie under the Sexual Offences Act 2003 Pt 2 (ss 80-136) (see PARA 563 et seq).

24 Ie under the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 7 (see note 19).

25 Ie under the Sexual Offences Act 2003 s 86(2) (see the text and notes 1-13).

26 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(5).

27 Ie a notification under the Sexual Offences Act 2003 s 86(2) (see the text and notes 1-9).

28 Sexual Offences Act 2003 s 86(3) (which provides that a notification under s 86 must disclose any information prescribed by regulations about the offender's return to the United Kingdom); Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, regs 8(1), (2), 9.

29 Ie unless his initial notification disclosed a date under the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 6(d) and a point of arrival under reg 6(e) (see the text and note 13) and his return was on that date and at that point: reg 9(3)(a), (b).

30 Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 9(3).

31 See the Sexual Offences Act 2003 s 91(1); and PARA 570.

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568. Method of notification.

An initial notification¹, a notification of change², a periodic re-notification³ and a notification of departure from⁴ or return to⁵ the United Kingdom⁶ is given by attending at the appropriate police station⁷ and giving a notification⁸ to any police officer, or to any person authorised for the purpose by the officer in charge of the station⁹. Where an initial notification, a notification of change or a periodic re-notification is given the offender must, if requested by the police officer or authorised person, allow the officer or person to take his fingerprints¹⁰, to photograph¹¹ any part of him¹², or to do both¹³, for the purpose of verifying his identity¹⁴.

Any notification given pursuant to these requirements must be acknowledged in writing in such form as the Secretary of State may direct¹⁵.

1 le a notification under the Sexual Offences Act 2003 s 83(1) (see PARA 563).

2 le a notification under the Sexual Offences Act 2003 s 84(1) (see PARA 565).

3 le a notification under the Sexual Offences Act 2003 s 85(1) (see PARA 566).

4 le a notification under the Sexual Offences Act 2003 s 86(2) (see PARA 567).

5 le a notification under the Sexual Offences Act 2003 s 86(3) (see PARA 567).

6 As to the meaning of 'United Kingdom' see PARA 9 note 2.

7 Sexual Offences Act 2003 s 87(1)(a); Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(1). An appropriate police station for these purposes is such police station in an offender's local police area as the Secretary of State may by regulations prescribe or, if there is more than one, at any of them (Sexual Offences Act 2003 s 87(1)(a)), although a person giving a notification of change in relation to a prospective change of home address (ie under s 84(1)(b) (see PARA 565)) or in relation to premises in which he has resided or stayed for a qualifying period (ie under s 84(1)(c) (see PARA 565)) may give the notification at a police station that would fall within s 87(1) if the change in home address had already occurred or (as the case may be) if the address of those premises were his home address (s 87(2)), and a person giving a notification under the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 5(3) (late notification of compulsory information by persons leaving the United Kingdom) or reg 7 (change to such information previously disclosed) (see PARA 567) may attend at any prescribed police station whether or not in his local police area (reg 10(2)). For the prescribed police stations see the Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2009, SI 2009/722.

'Local police area' means, in relation to a person, the police area in which his home address is situated (Sexual Offences Act 2003 ss 88(1), (3)(a), 133(1)); or in the absence of a home address, the police area in which the home address last notified is situated (s 88(3)(b)); or in the absence of a home address and of any such notification, the police area in which the court which last dealt with the person is situated (s 88(3)(c)). As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. For these purposes, the ways in which a court may be considered last to have dealt with a person are: (1) dealing with a person in respect of a listed sexual offence (see PARA 560) or an insanity or disability finding in respect of such an offence (s 88(4)(a)); (2) dealing with a person in respect of an offence of breach of a risk of sexual harm order (see PARAS 591-595) or of an interim risk of sexual harm order or a finding in respect of such an offence (s 88(4)(b)); (3) making, in respect of a person, a notification order (see PARAS 573-574), an interim notification order (see PARA 575), a sexual offences prevention order (see PARAS 600-603), an interim sexual offences prevention order (see PARA 601), a sex offender order (ie an order under the Crime and Disorder Act 1998 s 2 (repealed)) or an interim sex offender order (ie an order under s 2A (repealed)) (Sexual Offences Act 2003 s 88(4)(c)); or (4) making, in respect of a person, an order under the Crime and Disorder Act 1998 s 2, s 2A or s 20 (all repealed) (sex offender orders and interim orders made in England and Wales or Scotland) or corresponding Northern Irish provisions (Sexual Offences Act 2003 s 88(4)(d)). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31. As to a finding that a person was under a disability and did the act

or omission charged against him in respect of an offence see PARA 360 note 5. For these purposes, 'finding', in relation to an offence, means a finding of not guilty of the offence by reason of insanity or a finding that the person was under a disability and did the act or omission charged against him in respect of the offence: s 88(4).

8 Initial notifications, notifications of change and periodic re-notifications must be given orally: Sexual Offences Act 2003 s 87(1)(b). No such requirement is made in respect of notifications of departure from or return to the United Kingdom.

9 Sexual Offences Act 2003 s 87(1)(b); Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(3).

10 Sexual Offences Act 2003 s 87(4)(a). Failure without reasonable excuse to comply with the requirements of s 87(4) (see the text and notes 10-13) or the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220, reg 10(4) (see PARA 567), or notification of false particulars pursuant to reg 10(4) or reg 10(5) (see PARA 567) is an offence: see the Sexual Offences Act 2003 s 91(1); and PARA 570.

11 'Photograph' includes any process by means of which an image may be produced: Sexual Offences Act 2003 s 88(2).

12 Sexual Offences Act 2003 s 87(4)(b).

13 Sexual Offences Act 2003 s 87(4)(c).

14 Sexual Offences Act 2003 s 87(5).

15 Sexual Offences Act 2003 s 87(3).

UPDATE

568 Method of notification

NOTE 7--SI 2009/722 replaced: Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2010, SI 2010/207.

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569. Parental directions.

Where a relevant offender¹ is aged under 18² when he is before the court which deals with him in respect of an offence or finding, that court may direct that the obligations that would otherwise be imposed on him in connection with the making of an initial notification³, a notification of change⁴, a periodic re-notification⁵ or a notification of departure from or return to the United Kingdom⁶ are to be treated instead as obligations on the individual or individuals having parental responsibility⁷ for the offender⁸. The police⁹ may, by complaint to any magistrates' court whose commission area includes any part of the police area¹⁰, also apply for such a direction in respect of a relevant offender who resides in that area or who they believe is in or is intending to come to it¹¹, and who they believe is under 18¹². Where a parental direction is made, the person having parental responsibility for the offender must ensure that the offender attends at the police station with him when a notification is being given¹³.

The relevant offender¹⁴, the person having parental responsibility¹⁵, the police for the area in which the offender resides¹⁶ and the police for any other area which they believe that the offender is in, or is intending to come to¹⁷, may apply to the appropriate court¹⁸ for an order varying, renewing or discharging a parental direction¹⁹, and the court may make any order varying, renewing or discharging the direction as it considers appropriate²⁰.

A failure without reasonable excuse by the parent to give the necessary notification pursuant to a parental direction is an offence²¹. In addition, a notifying parent commits an offence if, without reasonable excuse, he fails to ensure that the young offender attends with him²².

1 As to the relevant offenders for these purposes see the Sexual Offences Act 2003 ss 80(1)(a)-(c), 81(1)(a)-(c); and PARAS 558-559.

2 As to proof of age see PARA 27. See also the Children and Young Persons Act 1933 s 99(2) (which provides that where a charge or indictment alleges that a person in respect of whom an offence has been committed is under a specified age, there is a rebuttable presumption that the person is under that age); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1243.

3 I.e a notification under the Sexual Offences Act 2003 s 83 (see PARA 563).

4 I.e a notification under the Sexual Offences Act 2003 s 84 (see PARA 565).

5 I.e a notification under the Sexual Offences Act 2003 s 85 (see PARA 566).

6 I.e a notification under the Sexual Offences Act 2003 s 86 (see PARA 567). As to the meaning of 'United Kingdom' see PARA 9 note 2.

7 As to the meaning of 'parental responsibility' see the Children Act 1989 s 3; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134 (definition applied by the Sexual Offences Act 2003 s 133(1)).

8 Sexual Offences Act 2003 s 89(1), (2)(a). Such a direction takes immediate effect and applies either until the offender attains the age of 18 (s 89(3)(a)) or for such shorter period as the court may, at the time the direction is given, direct (s 89(3)(b)).

9 Although the Sexual Offences Act 2003 s 89(4) states that the application must be made by a chief officer of police, the application may be made by another suitable person to whom the chief officer has delegated his responsibility (see *R (on the application of the Chief Constable of West Midlands Police) v Birmingham Justices* [2002] EWHC 1087 (Admin), [2003] Crim LR 37, [2002] 28 LS Gaz R 32), and it is therefore broadly correct to refer to the application having to be made by 'the police'. Determination of who is a suitable delegate is for the

chief officer, and improper delegation is a matter for the courts: *R (Chief Constable of West Midlands Police) v Birmingham Justices*. This decision was made in relation to an application for an anti-social behaviour order (see PARA 304) but is equally applicable by its reasoning to an application for an order under the Sexual Offences Act 2003 s 89.

10 As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

11 Sexual Offences Act 2003 s 89(4)(a).

12 Sexual Offences Act 2003 s 89(4)(b).

13 Sexual Offences Act 2003 s 89(2)(b).

14 Sexual Offences Act 2003 s 90(2)(a).

15 Sexual Offences Act 2003 s 90(2)(b).

16 Sexual Offences Act 2003 s 90(2)(c).

17 Sexual Offences Act 2003 s 90(2)(d).

18 The 'appropriate court' is the Crown Court, where the parental direction was made by the Court of Appeal (Sexual Offences Act 2003 s 90(5)(a)); otherwise, it means the court that made the direction (s 90(5)(b)). An application to the Crown Court must be made in accordance with rules of court (s 90(3)(a)); otherwise, it must be made by complaint (s 90(3)(b)).

19 Sexual Offences Act 2003 s 90(1).

20 Sexual Offences Act 2003 s 90(4). Before making the order the court must hear the applicant and (if they wish to be heard) any of the other persons who may apply for such an order: s 90(4).

21 See the Sexual Offences Act 2003 s 91(1)(a); and PARA 570.

22 See the Sexual Offences Act 2003 s 91(1); and PARA 570.

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570. Offences of failing to notify and notifying false information.

A person commits an offence if he fails, without reasonable excuse, to comply with:

- 1886 (1) the initial notification requirement¹;
- 1887 (2) the requirement to notify changes in notified information²;
- 1888 (3) the requirement to notify non-occurrence of changes in notified information in respect of which advance notice has been given³;
- 1889 (4) the requirement periodically to re-notify⁴;
- 1890 (5) the requirement to allow fingerprints to be taken and/or to be photographed when giving notification⁵;
- 1891 (6) the requirement, when a parental direction has been made⁶, that the parent ensures that the young offender attends with him when notification is given by the parent⁷; or
- 1892 (7) any requirement imposed by regulations⁸ in respect of travel outside the United Kingdom⁹.

A person commits any such offence on the day on which he first fails, without reasonable excuse, to comply with the initial notification requirement¹⁰, the requirement to notify changes in notified information¹¹, the requirement to notify non-occurrence of changes¹² or the requirement to make a notification under the travel notification regulations¹³ and continues to commit it throughout any period during which the failure continues¹⁴.

A person also commits an offence¹⁵ if he notifies to the police any information which he knows to be false in purported compliance with:

- 1893 (a) the initial notification requirement¹⁶;
- 1894 (b) the requirement to notify changes in notified information¹⁷;
- 1895 (c) the requirement periodically to re-notify¹⁸; or
- 1896 (d) any requirements imposed by regulations in respect of travel outside the United Kingdom¹⁹.

A person guilty of any of these offences is liable on conviction on indictment to imprisonment for a term not exceeding five years²⁰, or on summary conviction to imprisonment for a term not exceeding six months²¹ to a fine not exceeding the statutory maximum²² or to both²³. Proceedings for an offence may be commenced in any court with jurisdiction in any place where the defendant resides or is found²⁴.

1 Sexual Offences Act 2003 s 91(1)(a). For the initial notification requirement see s 83(1); and PARA 563.

2 Ie under the Sexual Offences Act 2003 s 84(1): see PARA 565.

3 Ie under the Sexual Offences Act 2003 s 84(4)(b): see PARA 565.

4 Ie under the Sexual Offences Act 2003 s 85(1): see PARA 566.

5 Ie under the Sexual Offences Act 2003 s 87(4): see PARA 568.

- 6 As to parental directions see PARA 569.
- 7 le under the Sexual Offences Act 2003 s 89(2)(b): see PARA 569.
- 8 le regulations made under the Sexual Offences Act 2003 s 86(1): see the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220; and PARAS 567, 568.
- 9 See PARAS 567, 568.
- 10 See the text and note 1.
- 11 See the text and note 2.
- 12 See the text and note 4.
- 13 See the text and notes 8-9.
- 14 Sexual Offences Act 2003 s 91(3). A person must not, however, be prosecuted under s 91(1) more than once in respect of the same failure: s 91(3).
- 15 Sexual Offences Act 2003 s 91(1)(b).
- 16 See PARA 563.
- 17 See PARA 565.
- 18 See PARA 566.
- 19 See PARA 567.
- 20 Sexual Offences Act 2003 s 91(2)(b). Where more than one offence is committed (eg a failure to notify a change of name and a failure to notify a change of address) and the offences are committed at different times, consecutive sentences are appropriate: *R v Adams (Christopher)* [2003] EWCA Crim 3231, [2004] 2 Cr App Rep (S) 78 (corresponding offences under the Sex Offenders Act 1997 s 3(1) (repealed)).
- 21 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed.
- 22 As to the statutory maximum see PARA 140.
- 23 Sexual Offences Act 2003 s 91(2)(a).
- 24 Sexual Offences Act 2003 s 91(4).

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571. Sharing of information for verification purposes.

A chief officer of police¹, the National Policing Improvement Agency², and the Serious Organised Crime Agency³, are empowered to supply to the Secretary of State⁴ or the Child Maintenance and Enforcement Commission⁵ for the purpose of verification⁶, any information notified to the police pursuant to the requirements relating to initial notification⁷, changes to notified information⁸, and periodic re-notification⁹. The Secretary of State¹⁰ and the Child Maintenance and Enforcement Commission¹¹ may in turn supply a report compiled for these purposes¹² to a chief officer of police¹³ and the Serious Organised Crime Agency¹⁴.

These provisions do not affect any other power to supply information¹⁵ or authorise the doing of anything that contravenes data protection laws¹⁶, although, subject to this, the supply of information under these provisions is taken not to breach any restriction on the disclosure of information (however arising or imposed)¹⁷.

1 Sexual Offences Act 2003 s 94(3)(a). As to chief officers of police and their functions see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

2 Sexual Offences Act 2003 s 94(3)(b) (substituted by the Police and Justice Act 2006 Sch 1 para 90). As to the National Policing Improvement Agency see **POLICE**.

3 Sexual Offences Act 2003 s 94(3)(c) (ss 94(3)(c), 95(2)(b) substituted by the Serious Organised Crime and Police Act 2005 Sch 4 paras 193-195). As to the Serious Organised Crime Agency see **POLICE**.

4 Sexual Offences Act 2003 s 94(2)(a). Where appropriate supply may be made to a Northern Ireland Department (s 94(2)(b)) or a person providing services to the Secretary of State, the Child Maintenance and Enforcement Commission or Northern Ireland Department in connection with a relevant function (s 94(2)(c) (amended by SI 2008/2656)). For these purposes, 'relevant function' means a function relating to social security, child support, employment or training, in relation to the Child Maintenance and Enforcement Commission, any function of that Commission, a function relating to passports, or a function under the Road Traffic Act 1988 Pt 3 (ss 87-109C) (licensing of drivers of vehicles) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 442 et seq) or a corresponding Northern Ireland enactment: Sexual Offences Act 2003 ss 94(8), 95(5) (s 94(8) amended by SI 2008/2656).

5 Sexual Offences Act 2003 s 94(2)(aa) (added by SI 2008/2656).

6 Sexual Offences Act 2003 s 94(2). In relation to information supplied under this provision to any person, the reference to verifying the information is a reference to checking its accuracy by comparing it with information held either by the Secretary of State, the Child Maintenance and Enforcement Commission or a Northern Ireland Department (where the information is held by him or it in connection with the exercise of a relevant function) (s 94(4)(a)(i) (amended by SI 2008/2656)) or by a person providing services to the Secretary of State, the Child Maintenance and Enforcement Commission or a Northern Ireland Department in connection with a relevant function (where the information is held by that person in connection with the provision of the services) (Sexual Offences Act 2003 s 94(4)(a)(ii)), and compiling a report of that comparison (s 94(4)(b)).

7 Sexual Offences Act 2003 s 94(1)(a). As to initial notification see s 83; and PARA 563. Information under the corresponding provisions of the Sex Offenders Act 1997 s 2(1)-(3) (repealed) may also be notified under these provisions: Sexual Offences Act 2003 s 94(1)(b).

8 For the provisions relating to notifying changes to notified information see the Sexual Offences Act 2003 s 84; and PARA 565.

9 For the provisions relating to periodic re-notification see the Sexual Offences Act 2003 s 85; and PARA 566.

- 10 Sexual Offences Act 2003 s 95(1)(a). This power may also be exercised, where appropriate, by the other persons referred to in note 4: s 95(1)(b), (c).
- 11 Sexual Offences Act 2003 s 95(1)(aa) (added by SI 2008/2656).
- 12 See note 6.
- 13 Sexual Offences Act 2003 s 95(2)(a). Such a report may contain any information held by the Secretary of State, the Child Maintenance and Enforcement Commission or a Northern Ireland Department in connection with the exercise of a relevant function (s 95(3)(a) (amended by SI 2008/2656)) or held in connection with the provision of services by a person providing services to the Secretary of State, the Child Maintenance and Enforcement Commission or Northern Ireland Department in connection with a relevant function (Sexual Offences Act 2003 s 95(3)(b)). Where a report contains such information the person to whom it is supplied may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of an offence under Pt 2 (ss 80-136) (s 95(4)(a)) and may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under Pt 2), but for no other purpose (s 95(4)(b)).
- 14 Sexual Offences Act 2003 s 95(2)(b) (as amended: see note 3).
- 15 Sexual Offences Act 2003 ss 94(7), 95(5).
- 16 Sexual Offences Act 2003 s 94(6). For the relevant data protection laws see the Data Protection Act 1998; and **CONFIDENCE AND DATA PROTECTION**.
- 17 Sexual Offences Act 2003 s 94(5).

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572. Powers of entry and search.

A justice of the peace may issue a warrant authorising a constable¹ to enter premises for the purpose of assessing the risks posed by the relevant offender² to which the warrant relates³ and to search the premises for that purpose⁴. The justice may issue such a warrant only on an application made by a senior police officer⁵ of the relevant force⁶ and only if the justice is satisfied that:

- 1897 (1) the address of each set of premises specified in the application is an applicable address for these purposes⁷;
- 1898 (2) the relevant offender is not currently detained⁸ or is outside the United Kingdom⁹;
- 1899 (3) it is necessary for a constable to enter and search the premises for the purpose of assessing the risks posed by the relevant offender to which the warrant relates¹⁰; and
- 1900 (4) on at least two occasions a constable has sought entry to the premises in order to search them for that purpose and has been unable to obtain entry for that purpose¹¹.

1 le a constable of the relevant force: Sexual Offences Act 2003 s 96B(1) (s 96B added by the Violent Crime Reduction Act 2006 s 58(1)). For this purpose 'relevant force' means the police force maintained for the police area in which the premises in respect of which the application is made or the warrant is issued are situated: Sexual Offences Act 2003 s 96B(10) (as so added).

2 For these purposes a reference to the relevant offender to whom the warrant relates is a reference to the relevant offender who has in accordance with the Sexual Offences Act 2003 Pt 2 (ss 80-136) notified the police that the premises specified in the warrant are his home address, or in respect of whom there are reasonable grounds to believe that he resides there or may regularly be found there: s 96B(9) (as added: see note 1).

3 Sexual Offences Act 2003 s 96B(1)(a) (as added: see note 1).

4 Sexual Offences Act 2003 s 96B(1)(b) (as added: see note 1). A warrant issued under these provisions must specify the one or more sets of premises to which it relates (s 96B(5) (as so added)) and may authorise the constable executing it to use reasonable force if necessary to enter and search the premises (s 96B(6) (as so added)). It may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose mentioned in s 96B(1)(a): s 96B(7) (as so added). Where a warrant issued under s 96B authorises multiple entries, the number of entries authorised may be unlimited or limited to a maximum: s 96B(8) (as so added).

5 For these purposes 'senior police officer' means a constable of the rank of superintendent or above: Sexual Offences Act 2003 s 96B(10) (as added: see note 1).

6 Sexual Offences Act 2003 s 96B(1) (as added: see note 1).

7 Sexual Offences Act 2003 s 96B(2)(a) (as added: see note 1). An address is an applicable address for these purposes if:

- 903 (1) it is the address which was last notified in accordance with Pt 2 by a relevant offender to the police as his home address (s 96B(3)(a) (as so added)); or
- 904 (2) there are reasonable grounds to believe that a relevant offender resides there or may regularly be found there (s 96B(3)(b) (as so added)).

8 An offender is currently detained for this purpose if he is:

905 (1) remanded in or committed to custody by order of a court (Sexual Offences Act 2003 s
96B(4)(a));

906 (2) serving a sentence of imprisonment or a term of service detention (s 96B(4)(b)); or

907 (3) detained in a hospital (s 96B(4)(c)).

As to the meanings of 'imprisonment' and 'detained in a hospital' see PARA 559 note 6.

9 Sexual Offences Act 2003 s 96B(2)(b), (4)(d) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 9 note 2.

10 Sexual Offences Act 2003 s 96B(2)(c) (as added: see note 1).

11 Sexual Offences Act 2003 s 96B(2)(d) (as added: see note 1).

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B. NOTIFICATION ORDERS

573. Notification orders in respect of offences committed outside the United Kingdom.

A notification order may be made in respect of a person who has committed an act which constituted an offence under the law in force in a country outside the United Kingdom¹ and which had it been committed in any part of the United Kingdom would have constituted one of the offences in respect of which the notification requirements arise²: for the purposes of the making of notification orders these are known as 'relevant offences'³. The police⁴ may, by complaint to any magistrates' court whose commission area includes any part of the police area⁵ apply for a notification order⁶ provided that three specified conditions are met with respect to the defendant⁷ and the defendant resides in the police area or the police believe that the defendant is in, or is intending to come to, the police area⁸; and if the specified conditions are met, the court must make the order⁹. Where a notification order is made, the defendant becomes or (as the case may be) remains subject to the notification requirements¹⁰ for the duration of the notification period¹¹. A court which makes a notification order in respect of a young offender (that is, a person aged under 18) may make a parental direction¹². A defendant may appeal to the Crown Court against the making of a notification order¹³.

1 Sexual Offences Act 2003 ss 97(6), 99(1)(a). As to the meaning of 'United Kingdom' see PARA 9 note 2. An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for these purposes however described in that law: s 99(2).

2 Sexual Offences Act 2003 s 99(1)(b). As to the notification requirements see PARA 557 et seq. As to the offences in respect of which the notification requirements arise see Sch 3; and PARA 560. Where the offence in question is a foreign offence (ie an act which constituted an offence under the law in force in a country outside the United Kingdom (the 'relevant foreign law') (s 132(4)(a)) and would have constituted an offence subject to a sentencing condition (but not any other offence listed in Sch 3 (see PARA 560)) if it had been done in any part of the United Kingdom (s 132(4)(b)), a person is regarded as convicted under the relevant foreign law of a foreign offence at the time when he is, in respect of the offence, dealt with under that law in a way equivalent to that mentioned in Sch 3 as it applies to the corresponding United Kingdom offence (s 132(6)). In relation to a foreign offence, references to the corresponding United Kingdom offence are references to the offence (or any offence) to which s 132(4)(b) applies in the case of that foreign offence: s 132(5). Where in the case of any person a court exercising jurisdiction under the relevant foreign law makes in respect of a foreign offence a finding equivalent to a relevant finding, the court's finding is for these purposes to be regarded as made at the time when the person is, in respect of the finding, dealt with under that law in a way equivalent to that mentioned in Sch 3 as it applies to the corresponding United Kingdom offence: s 132(7). 'Country' includes territory: s 133(1). As to the meaning of 'conviction' see PARA 363 note 2.

On an application for a notification order the condition in s 99(1)(b) is to be taken as met unless, not later than three days before the hearing date for the application for the notification order (Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, r 4), the defendant serves on the applicant a notice stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met (Sexual Offences Act 2003 s 99(3)(a)), showing his grounds for that opinion (s 99(3)(b)), and requiring the applicant to prove that the condition is met (s 99(3)(c)), although the court may, if it thinks fit, permit the defendant to require the applicant to prove that the condition is met without service of such a notice (s 99(4)).

3 Sexual Offences Act 2003 ss 98(3)(d), 99(1).

4 Although these provisions refer to a 'chief officer of police' in connection with the making of applications for notification orders, the powers described in the text are exercisable by the police generally (ie by another suitable person to whom the chief officer has delegated his responsibility) (see *R (on the application of the Chief*

Constable of West Midlands Police) v Birmingham Justices [2002] EWHC 1087 (Admin), [2003] Crim LR 37, [2002] 28 LS Gaz R 32), and it is therefore broadly correct to refer to the application having to be made by 'the police'. Determination of who is a suitable delegate is for the chief officer, and improper delegation is a matter for the courts: *R (Chief Constable of West Midlands Police) v Birmingham Justices*. This decision was made in relation to an application for an anti-social behaviour order (see PARA 304) but is equally applicable by its reasoning to an application for a notification order.

5 As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

6 An application for a notification order may be in the form set out the Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, Sch 1 (r 3(1)(a)) and a summons directed to the defendant requiring him to appear before a magistrates' court to answer an application for such an order may be in the form set out in Sch 2 (r 3(2)).

Proceedings by complaint are governed by the Magistrates' Courts Act 1980 ss 51-57, under which (as in the case of criminal proceedings) the court is required to give a defendant sufficient opportunity to attend and cannot otherwise proceed in his absence (see **MAGISTRATES** vol 29(2) (Reissue) PARAS 678, 693). Because the proceedings are civil, the rules of civil evidence, not criminal evidence, apply (see *Clingham v Royal Borough of Kensington and Chelsea, R (on the application of McCann) v Crown Court at Manchester* [2002] UKHL 39, [2003] 1 AC 787, [2002] 4 All ER 593, by analogy with the procedure for anti-social behaviour orders with which those proceedings were concerned): thus hearsay evidence, admitted under the statutory procedure for the introduction of such evidence in civil cases, is, depending on its persuasiveness, capable of satisfying the proof required in applications for preventive orders under the Sexual Offences Act 2003 Pt 2 (ss 80-136).

7 Sexual Offences Act 2003 ss 97(1)(a), 133(1). As to these conditions see PARA 574.

8 Sexual Offences Act 2003 s 97(1)(b).

9 Sexual Offences Act 2003 s 97(5). A notification order must be in the form set out in the Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, Sch 3: r 3(3). As soon as reasonably practicable after a notification order has been made, the designated officer for the court must serve a copy of that order on the defendant: r 3(5) (amended by SI 2005/617). Any copy of an order required to be sent to the defendant under these provisions must be either given to him in person or sent by post to his last known address and, if so given or sent, is deemed to have been received by him, unless the defendant proves that it was not received by him: Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, r 3(5) (as so amended).

10 As to the notification requirements see PARA 557 et seq.

11 Sexual Offences Act 2003 s 98(1)(b). As to the notification period see s 82; and PARA 561. The provisions are modified in their application to persons subject to notification orders, as follows:

- 908 (1) the 'relevant date' in respect of a person who is subject to a notification order by virtue of a conviction for an offence committed overseas (see s 97(2)(a); and PARA 574) is the date of conviction (ss 98(2)(a), 133(1));
- 909 (2) the 'relevant date' in respect of a person who is subject to a notification order by virtue of a corresponding finding in connection with an offence committed overseas (see s 97(2)(b), (c); and PARA 574) is the date of the finding (s 98(2)(b));
- 910 (3) the 'relevant date' in respect of a person who is subject to a notification order by virtue of a caution (see PARA 558) given in connection with an offence committed overseas (see s 97(2)(d); and PARA 574) is the date of the finding (s 98(2)(c));
- 911 (4) references in s 82 (except in s 82(1)) to a person (or relevant offender) within any provision of s 80 are to be read as references to the defendant (s 98(3)(a));
- 912 (5) the reference in s 82(1) to s 80(1)(d) is to be read as a reference to s 97(2)(d) (see PARA 574) (s 98(3)(b));
- 913 (6) references to an order of any description are to be read as references to any corresponding disposal made in relation to the defendant in respect of an offence or finding by reference to which the notification order was made (s 98(3)(c)); and
- 914 (7) the reference to offences listed in Sch 3 is to be read as a reference to relevant offences (s 98(3)(d)).

As to the meaning of 'cautioned' see PARA 534 note 11.

12 See the Sexual Offences Act 2003 s 89(1); and PARA 569.

13 Sexual Offences Act 2003 s 101.

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574. Conditions for making notification orders.

The first condition which must be satisfied in order for the police¹ to make an application for a notification order² in respect of a person is that under the law of a country³ outside the United Kingdom⁴:

- 1901 (1) he has been convicted⁵ of a relevant offence⁶ (whether or not he has been punished for it)⁷;
- 1902 (2) a court exercising jurisdiction under that law has made in respect of such an offence a finding equivalent to a finding that he is not guilty by reason of insanity⁸ or to a finding that the defendant is under a disability and did the act charged against him in respect of the offence⁹; or
- 1903 (3) he has been cautioned in respect of a relevant offence¹⁰.

The second condition is that:

- 1904 (a) the first condition is met because of a conviction, finding or caution which occurred on or after 1 September 1997¹¹;
- 1905 (b) the first condition is met because of a conviction or finding which occurred before that date, but the person was dealt with in respect of the offence or finding on or after that date, or has yet to be dealt with in respect of it¹²; or
- 1906 (c) the first condition is met because of a conviction or finding which occurred before 1 September 1997, but on that date the person was, in respect of the offence or finding, subject under the law of the country concerned to detention, supervision or any other equivalent disposal¹³.

The third condition is that the notification period¹⁴ in respect of the relevant offence has not expired¹⁵.

1 The Sexual Offences Act 2003 s 97 refers to a 'chief officer of police' but the powers described in the text are exercisable by the police generally: see PARA 573 note 4.

2 As to the making of notification orders see PARA 573.

3 As to the meaning of 'country' see PARA 534 note 12.

4 As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 As to the meaning of 'conviction' see PARA 363 note 2.

6 As to the meaning of 'relevant offence' see PARA 573.

7 Sexual Offences Act 2003 s 97(2)(a).

8 Sexual Offences Act 2003 s 97(2)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

9 Sexual Offences Act 2003 s 97(2)(c). As to references to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

- 10 Sexual Offences Act 2003 s 97(2)(d). As to the meaning of 'cautioned' see PARA 534 note 11.
- 11 Sexual Offences Act 2003 s 97(3)(a).
- 12 Sexual Offences Act 2003 s 97(3)(b).
- 13 Sexual Offences Act 2003 s 97(3)(c). The reference in the text to 'any other equivalent disposal' is a reference to any disposal equivalent to those set out in s 81(3) (read with ss 81(6), 131) (see PARAS 559, 603): s 97(3)(c).
- 14 le the period set out in the Sexual Offences Act 2003 s 82, as modified by s 98(2), (3) (see PARAS 561, 573 note 11).
- 15 Sexual Offences Act 2003 s 97(4).

UPDATE

574 Conditions for making notification orders

NOTE 13--See *Masterman v Metropolitan Police Commissioner* [2010] All ER (D) 72 (Mar), DC.

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575. Interim notification orders.

Where an application for a notification order has not been determined¹, an application for an interim notification order may be made² either in the complaint containing the main application³ or, if the main application has been made, by complaint to the court to which that application has been made by the person who made it⁴. The court may make an interim order if it considers it just to do so⁵. An interim order subjects the defendant to the notification requirements⁶ from the date of service of the order⁷, so that the initial notification requirement⁸ must be complied with within three days of that date⁹. The duration of an interim order is a fixed period specified in the order¹⁰, and it ceases to have effect, if it has not already done so, on the determination of the main application¹¹. The applicant or the defendant may by complaint apply to the court which made the interim order for it to be varied, renewed or discharged¹². A court which makes an interim notification order in respect of a young offender (that is, a person aged under 18) may make a parental direction¹³. A defendant may appeal to the Crown Court against the making of an interim notification order¹⁴.

1 Sexual Offences Act 2003 s 100(1). As to the making of notification orders see PARA 573.

2 An application for an interim notification order may be in the form set out in the Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, Sch 1 (r 3(1)(b)), and a summons directed to the defendant requiring him to appear before a magistrates' court to answer an application for such an order may be in the form set out in Sch 2 (r 3(2)).

3 Sexual Offences Act 2003 ss 100(2)(a), 133(1).

4 Sexual Offences Act 2003 s 100(2)(b).

5 Sexual Offences Act 2003 s 100(3). An interim notification order must be in the form set out in the Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, Sch 4: r 3(4). As soon as reasonably practicable after an interim order has been made, the designated officer for the court must serve a copy of the order on the defendant: r 3(5) (amended by SI 2005/617). Any copy of an order required to be sent to the defendant under these provisions must be either given to him in person or sent by post to his last known address and, if so given or sent, is deemed to have been received by him, unless the defendant proves that it was not received by him: Magistrates' Courts (Notification Orders) Rules 2004, SI 2004/1052, r 3(5) (as so amended).

6 As to the notification requirements see PARA 557 et seq.

7 Sexual Offences Act 2003 ss 100(5)(b), (6), 133(1).

8 As to the initial notification requirement see PARA 563.

9 See the Sexual Offences Act 2003 s 100(5)(b), (6); and PARA 563.

10 Sexual Offences Act 2003 s 100(4)(a).

11 Sexual Offences Act 2003 s 100(4)(b).

12 Sexual Offences Act 2003 s 100(7).

13 See the Sexual Offences Act 2003 s 89(1); and PARA 569.

14 Sexual Offences Act 2003 s 101.

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(x) Notification Requirements (Terrorism Offences)

A. APPLICATION OF NOTIFICATION REQUIREMENTS

576. Persons who may be the subject of notification requirements in respect of terrorism offences.

Provision is made for the imposition of notification requirements on persons dealt with for certain offences having a terrorist connection¹. Such requirements apply to any person who is aged 16 or over at the time of being dealt with for an applicable offence connected with terrorism² and who is made subject in respect of the offence to a sentence or order which triggers the notification requirements³. Provision is also made for the application of the notification requirements to persons dealt with outside the United Kingdom for corresponding foreign offences⁴ and for the imposition of restrictions on travel outside the United Kingdom on persons subject to the notification requirements⁵.

¹ See the Counter-Terrorism Act 2008 Pt 4 (ss 40-61); and PARA 577 et seq. For the purposes of the Counter-Terrorism Act 2008 an offence has a terrorist connection if the offence is, or takes place in the course of, an act of terrorism, or is committed for the purposes of terrorism: s 93. As to the meaning of 'terrorism' see the Terrorism Act 2000 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383 (definition applied by the Counter-Terrorism Act 2008 s 92).

² Counter-Terrorism Act 2008 s 44(a). As to the applicable offences for these purposes (ie the offences to which Pt 4 applies) see ss 41-43; and PARA 577 (s 40(1)(a)). As to when a person is being 'dealt with' for an offence, and as to the time at which a person is dealt with for an offence, see PARA 577 notes 1, 2. For the purposes of s 44(a) a person is treated as dealt with at the time of the original decision (see PARA 577 note 2) and any subsequent variation of the decision is disregarded: s 61(4)(b). As to the meaning of 'variation' see PARA 585 note 3.

³ Counter-Terrorism Act 2008 s 44(b). As to the sentences and orders which trigger the notification requirements see ss 44-46; and PARA 578 (s 40(1)(b)): see also Sch 6 (corresponding service offences). As to the notification requirements themselves see ss 47-53; and PARA 579 et seq (s 40(1)(c), (d)).

⁴ See the Counter-Terrorism Act 2008 ss 40(2)(a), 57, Sch 4; and PARAS 586, 587.

⁵ See the Counter-Terrorism Act 2008 ss 40(2)(b), 58, Sch 5; and PARA 588.

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577. Applicable terrorism offences.

The notification requirements in respect of persons dealt with for terrorism offences¹ may be imposed² on persons dealt with for:

- 1907 (1) offences relating to proscribed organisations³;
- 1908 (2) offences relating to terrorist property⁴;
- 1909 (3) the failure to disclose information about acts of terrorism⁵;
- 1910 (4) weapons training⁶;
- 1911 (5) directing terrorism, possessing things and collecting information for the purposes of terrorism and inciting terrorism outside the United Kingdom⁷;
- 1912 (6) the use of noxious substances or things⁸;
- 1913 (7) encouragement of terrorism⁹;
- 1914 (8) preparation and training for terrorism¹⁰;
- 1915 (9) offences relating to radioactive devices and material and nuclear facilities¹¹;
- 1916 (10) an offence in respect of which there is¹² extra-territorial jurisdiction¹³;
- 1917 (11) any ancillary offence in relation to the offences listed above¹⁴;
- 1918 (12) service offences as respects which the corresponding civil offence is any of the offences listed above¹⁵; and
- 1919 (13) an offence as to which a court has determined¹⁶ that the offence has a terrorist connection¹⁷.

The notification requirements may be imposed¹⁸ on a person dealt with for an applicable offence at any time¹⁹.

1 As to the meaning of 'terrorism' see PARA 576 note 1. For the purposes of the notification requirements (ie for the purposes of the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) (see PARA 576)) references to a person being dealt with for or in respect of an offence are to their being sentenced or made subject to a hospital order (or, in relation to foreign proceedings and cases where the notification requirements apply because a notification order (see PARAS 586-587) has been made, being made subject by the foreign court to a sentence or order within Sch 4 para 3(2)(a) or (b)), in respect of the offence; and references to an offence being dealt with are to a person being dealt with in respect of the offence: s 61(1), Sch 4 para 8(a). 'Hospital order' means a hospital order within the meaning of the Mental Health Act 1983 (see PARA 332) or corresponding Scottish or Northern Ireland provisions: Counter-Terrorism Act 2008 s 60.

2 Ie the Counter-Terrorism Act 2008 Pt 4 applies in respect of such persons: s 41(1). The Secretary of State may by order amend s 41(1): s 41(3). An order adding an offence applies only in relation to offences dealt with after the order comes into force (s 41(5)); and an order removing an offence has effect in relation to offences whenever dealt with, whether before or after the order comes into force (s 41(6)). As to when a person is being 'dealt with' for an offence see note 1: references in Pt 4 to the time at which a person is dealt with for an offence are to the time at which they are first dealt with by a magistrates' court or the Crown Court (or, in relation to foreign proceedings and cases where the notification requirements apply because a notification order (see PARAS 586-587) has been made, by the foreign court of first instance): s 61(2)(a), Sch 4 para 8(b). This is subject to s 61(3)-(7); and is referred to as the 'original decision': s 61(2). For the purposes of s 41(5) a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded: s 61(4)(a). As to the meaning of 'variation' see PARA 585 note 3.

Where an offence is removed from the list, a person subject to the notification requirements by reason of that offence being listed (and who is not otherwise subject to those requirements) ceases to be subject to them

when the order comes into force: s 41(7). At the date at which this volume states the law no such order had been made.

3 Ie an offence under the Terrorism Act 2000 s 11 or s 12 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 387, 388): Counter-Terrorism Act 2008 s 41(1)(a).

4 Ie an offence under the Terrorism Act 2000 ss 15-18 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 390-393): Counter-Terrorism Act 2008 s 41(1)(a).

5 Ie an offence under the Terrorism Act 2000 s 38B (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 414): Counter-Terrorism Act 2008 s 41(1)(a).

6 Ie an offence under the Terrorism Act 2000 s 54 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 439): Counter-Terrorism Act 2008 s 41(1)(a).

7 Ie an offence under the Terrorism Act 2000 ss 56-61 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 441, 442, 447, 469): Counter-Terrorism Act 2008 s 41(1)(a).

8 Ie an offence under the Anti-terrorism, Crime and Security Act 2001 s 113 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 123): Counter-Terrorism Act 2008 s 41(1)(c).

9 Ie an offence under the Terrorism Act 2006 ss 1, 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 448, 449): Counter-Terrorism Act 2008 s 41(1)(d).

10 Ie an offence under the Terrorism Act 2006 ss 5, 6, 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 439, 440, 443): Counter-Terrorism Act 2008 s 41(1)(d).

11 Ie an offence under the Terrorism Act 2006 ss 9, 10, 11 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 444-446): Counter-Terrorism Act 2008 s 41(1)(d).

12 Ie, in respect of certain offences committed outside the United Kingdom for the purposes of terrorism, by virtue of any of the Terrorism Act 2000 ss 62-63D or the Terrorism Act 2006 s 17 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 470-476). As to the meaning of 'United Kingdom' see PARA 9 note 2.

13 Counter-Terrorism Act 2008 s 41(1)(b), (e).

14 Counter-Terrorism Act 2008 s 41(2). In the Counter-Terrorism Act 2008 'ancillary offence', in relation to an offence, means any of:

915 (1) aiding, abetting, counselling or procuring the commission of the offence (s 94(1)(a));

916 (2) an offence under the Serious Crime Act 2007 Pt 2 (ss 44-67) (encouraging or assisting crime: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) (including, in relation to times before 1 October 2008 (ie the date on which Pt 2 was brought into force by the Serious Crime Act 2007 (Commencement No 3) Order 2008, SI 2008/2504), an offence of incitement under the law of England and Wales or Northern Ireland) in relation to the offence (Counter-Terrorism Act 2008 s 94(1)(b), (2)); and

917 (3) attempting or conspiring to commit the offence (s 94(1)(c)).

15 See the Counter-Terrorism Act 2008 Sch 6 para 1, which provides that Pt 4 applies to a service offence as respects which the corresponding civil offence is an offence within s 41(1) or (2) (see the text and notes 1-14). 'Service court', 'service offence' and 'corresponding civil offence' are defined for the purposes of the Counter-Terrorism Act 2008 by s 95: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

16 Ie under the Counter-Terrorism Act 2008 s 30 (sentences for offences with a terrorist connection: see PARA 622).

17 Counter-Terrorism Act 2008 s 42(1)(a). As to when an offence has a terrorist connection see PARA 576 note 1. Part 4 also applies to a service offence as to which the service court dealing with the offence has determined in accordance with s 32 (see PARA 622) that the offence has a terrorist connection: Sch 6 para 2(1).

A person to whom the notification requirements apply by virtue of such a determination as is mentioned in s 42(1)(a) or Sch 6 para 2(1) may appeal against it to the same court, and subject to the same conditions, as an appeal against sentence (s 42(2), Sch 6 para 2(2)) and if the determination is set aside on appeal, the notification requirements are treated as never having applied to that person in respect of the offence (s 42(3), Sch 6 para 2(3)). Where an order is made under s 33 removing an offence from the list in Sch 2 (see PARA 622) a person subject to the notification requirements by reason of that offence being so listed (and who is not

otherwise subject to those requirements) ceases to be subject to them when the order comes into force: s 42(4).

18 le the Counter-Terrorism Act 2008 Pt 4 applies in respect of such persons: s 43(1).

19 See the Counter-Terrorism Act 2008 s 43(1), which provides that Pt 4 applies to a person dealt with for an offence or a service offence before 1 October 2009 (ie the date on which Pt 4 was brought into force by the Counter-Terrorism Act 2008 (Commencement No 4) Order 2009, SI 2009/1493) only if the offence (or the corresponding civil offence) is on that date within the Counter-Terrorism Act 2008 s 41(1) or s 41(2) (see the text and notes 1-14) (s 43(1)(a), Sch 6 paras 3(1)(a), 12(a)) and immediately before that date the person:

918 (1) is imprisoned or detained in pursuance of the sentence passed or order made in respect of the offence (s 43(1)(b)(i), Sch 6 para 3(1)(b)(i));

919 (2) would be so imprisoned or detained but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal (s 43(1)(b)(ii), Sch 6 para 3(1)(b)(ii)); or

920 (3) is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence (s 43(1)(b)(iii), Sch 6 para 3(1)(b)(iii)).

In relation to a person dealt with for an offence before 1 October 2009:

921 (a) any reference in Pt 4 to a sentence, order or finding under a specified statutory provision includes a sentence or order under any corresponding earlier statutory provision (s 43(2)(a), Sch 6 para 3(2));

922 (b) any reference in Pt 4 to a person being or having been found to be under a disability and to have done the act charged against them in respect of an offence includes a reference to their being or having been found unfit to be tried for the offence (s 43(2)(b)(i)), insane so that their trial for the offence cannot or could not proceed (s 43(2)(b)(ii)) or unfit to be tried and to have done the act charged against them in respect of the offence (s 43(2)(b)(iii)).

For the purposes of s 43(1), (2), Sch 6 para 3(1), (2), a person is dealt with for an offence before 1 October 2009 if the time of the original decision (see note 2) falls before the that date: s 61(5)(a). Where in such a case s 61(3) (see PARA 585) applies for the purposes of any provision of Pt 4, s 61(3) has effect as if the provisions of Pt 4 had been in force at all material times: s 61(5).

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578. Sentences and orders triggering notification requirements.

The notification requirements¹ apply to a person who in England and Wales²:

- 1920 (1) has been convicted of an applicable terrorism offence³ and sentenced in respect of the offence to:
- .24**
- 31. (a) imprisonment or custody for life⁴;
 - 32. (b) imprisonment or detention in a young offender institution for a term of 12 months or more⁵;
 - 33. (c) imprisonment or detention in a young offender institution for public protection⁶;
 - 34. (d) detention for life or for a period of 12 months or more⁷;
 - 35. (e) a detention and training order for a term of 12 months or more⁸;
 - 36. (f) detention for public protection⁹; or
 - 37. (g) detention during Her Majesty's pleasure¹⁰; or
- .25**
- 1921 (2) has been:
- .26**
- 38. (a) convicted of an applicable terrorism offence carrying a maximum term of imprisonment of 12 months or more¹¹;
 - 39. (b) found not guilty by reason of insanity of such an offence¹²; or
 - 40. (c) found to be under a disability and to have done the act charged against them in respect of such an offence¹³,
- .27**

and made subject in respect of the offence to a hospital order¹⁴.

These provisions apply in a modified form to persons being dealt with for service offences¹⁵.

1 As to the persons who may be the subject of notification requirements in respect of terrorism offences see PARAS 576, 577; as to the notification requirements themselves see PARA 579 et seq.

2 Corresponding provision is made in respect of Scotland and Northern Ireland: see the Counter-Terrorism Act 2008 s 45(2), (3).

3 I.e. an offence to which the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) applies in respect of such persons (see PARA 577): s 45(1)(a). The Secretary of State may by order amend the provisions of s 45 referring to a specified term or period of imprisonment or detention: s 46(1). An order reducing a specified term or period has effect only in relation to persons dealt with after the order comes into force (s 46(2)); where an order increases a specified term or period it has effect in relation to persons dealt with at any time, whether before or after the order comes into force and a person who would not have been subject to the notification requirements if the order had been in force when the offence was dealt with (and who is not otherwise subject to those requirements) ceases to be subject to the requirements when the order comes into force (s 46(3)). As to when a person is being 'dealt with' for an offence, and as to the time at which a person is dealt with for an offence, see PARA 577 notes 1, 2. For the purposes of s 46(2) a person is treated as dealt with at the time of the original decision (see PARA 577 note 2) and any subsequent variation of the decision is disregarded: s 61(4)(c). As to the meaning of 'variation' see PARA 585 note 3.

4 Counter-Terrorism Act 2008 s 45(1)(a)(i). As to imprisonment and custody for life see PARAS 79, 68 et seq.

- 5 Counter-Terrorism Act 2008 s 45(1)(a)(ii). As to detention in a young offender institution see PARA 85 et seq.
- 6 Counter-Terrorism Act 2008 s 45(1)(a)(iii). As to such imprisonment or detention see the Criminal Justice Act 2003 s 225; and PARAS 73, 74.
- 7 Counter-Terrorism Act 2008 s 45(1)(a)(iv). As to such detention see the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (offenders under 18 convicted of certain serious offences); and PARA 78.
- 8 Counter-Terrorism Act 2008 s 45(1)(a)(v). As to such detention see the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (offenders under 18); and PARA 89.
- 9 Counter-Terrorism Act 2008 s 45(1)(a)(vi). As to such detention see the Criminal Justice Act 2003 s 226 (serious offences committed by persons under 18); and PARAS 82, 83.
- 10 Counter-Terrorism Act 2008 s 45(1)(a)(vii). As to detention during Her Majesty's pleasure see PARA 81.
- 11 Counter-Terrorism Act 2008 s 45(1)(b)(i). As to detention during Her Majesty's pleasure see PARA 81. References to an offence carrying a maximum term of imprisonment of 12 months or more are to an offence carrying such a maximum term in the case of a person who has attained the age of 21 (as from the day to be appointed for the coming into force of the Criminal Justice and Court Services Act 2000 s 61 (see PARA 11), 18 in relation to England and Wales) (s 45(4)(a), (5)) and include an offence carrying in the case of such a person a maximum term of life imprisonment and an offence for which in the case of such a person the sentence is fixed by law as life imprisonment (s 45(4)(b)).
- 12 Counter-Terrorism Act 2008 s 45(1)(b)(ii). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.
- 13 Counter-Terrorism Act 2008 s 45(1)(b)(iii). As to such findings see the Criminal Procedure (Insanity) Act 1964 s 4, s 4A; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1265.
- 14 Counter-Terrorism Act 2008 s 45(1)(b). As to the meaning of 'hospital order' see PARA 577 note 1.
- 15 See the Counter-Terrorism Act 2008 Sch 6 paras 4-6, 12(b), 13; and see in particular Sch 6 para 11, which provides that references in Pt 4 to a sentence of detention do not include a sentence of service detention (as defined by the Armed Forces Act 2006 s 374: see **ARMED FORCES**) or a corresponding sentence passed under (or by virtue of) the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957. 'Service offence' is defined for the purposes of the Counter-Terrorism Act 2008 by s 95: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

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B. NOTIFICATION REQUIREMENTS

579. Initial notification and annual renotification under the notification requirements.

A person to whom the notification requirements apply¹ must² notify to the police³:

- 1922 (1) date of birth⁴;
- 1923 (2) national insurance number⁵;
- 1924 (3) name on the date on which the person was dealt with in respect of the offence (where the person used one or more other names on that date, each of those names)⁶;
- 1925 (4) home address on that date⁷;
- 1926 (5) name on the date on which notification is made (where the person uses one or more other names on that date, each of those names)⁸;
- 1927 (6) home address on the date on which notification is made⁹;
- 1928 (7) address of any other premises in the United Kingdom at which, at the time the notification is made, the person regularly resides or stays¹⁰; and
- 1929 (8) any other information prescribed by regulations made by the Secretary of State¹¹.

This information must, subject to any intervening statutory notifications, be re-notified to the police annually¹² unless the person in question is in custody, imprisoned or detained¹³, in which event he must notify the police of this information on his release¹⁴. Any period of absence from the United Kingdom does not in general affect the requirement for initial notification, although it may affect the requirement for periodic re-notification¹⁵.

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with these requirements is an offence¹⁶.

1 Ie a person to whom the notification requirements in the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) (see PARAS 576, 577) apply. As to the persons who may be the subject of notification requirements in respect of terrorism offences see PARAS 576-578. These provisions (ie s 47: see the text and notes 2-11) do not apply to a person who is subject to the notification requirements in respect of another offence (and does not cease to be so subject before the end of the period within which notification is to be made) (s 47(5)(a)) and has complied with s 47 in respect of that offence (s 47(5)(b)).

2 Ie within the period of three days beginning with the day on which the person is dealt with in respect of the offence in question: Counter-Terrorism Act 2008 s 47(1). In relation to foreign proceedings and cases where the notification requirements apply because a notification order (see PARAS 586-587) has been made, this period begins with the date of service of the notification order: Sch 4 para 8(c). As to when a person is being 'dealt with' for an offence, and as to the time at which a person is dealt with for an offence, see PARA 577 notes 1, 2. In the application of these provisions to a person dealt with for an offence before 1 October 2009 (ie the date on which Pt 4 was brought into force by the Counter-Terrorism Act 2008 (Commencement No 4) Order 2009, SI 2009/1493) (that is to say, an offence where the time of the original decision (see PARA 577 note 2) falls before that date) who, immediately before that date, would be imprisoned or detained in respect of the offence but for being unlawfully at large, absent without leave, on temporary leave or leave of absence, or on bail pending an appeal (Counter-Terrorism Act 2008 ss 47(6)(a), 61(6)(a)), or is on licence, having served the custodial part of a sentence of imprisonment in respect of the offence (s 47(6)(b)), the reference in s 47(1) to the day on which the person is dealt with in respect of the offence must be read as a reference to 1 October 2009 (ss 47(6), 61(6)).

(b)). In determining the period within which notification is to be made under s 47 there must be disregarded any time when the person is remanded in or committed to custody by an order of a court (s 47(4)(a)), serving a sentence of imprisonment or detention (s 47(4)(b)), detained in a hospital (s 47(4)(c)) or detained under the Immigration Acts (s 47(4)(d)). 'Detained in a hospital' means detained in a hospital under the Mental Health Act 1983 Pt III (ss 35-55) (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 486 et seq) (or corresponding Scottish or Northern Irish provisions): Counter-Terrorism Act 2008 s 60. As to the Immigration Acts see the UK Borders Act 2007 s 61(2); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**. In connection with service detention see PARA 578 note 15; and as to the modified application of the Counter-Terrorism Act 2008 s 47(4), (6) in relation to service offences see Sch 6 paras 8(1)(a), 9. 'Service offence' is defined for the purposes of the Counter-Terrorism Act 2008 by s 95: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

3 Notification under the Counter-Terrorism Act 2008 s 47 (see the text and notes 4-11), s 48 (notification of change: see PARA 580), s 49 (periodic re-notification: see PARA 579) or s 56 (notification on return after absence from United Kingdom: see PARA 584) must be made by the person attending at a police station in the person's local police area (s 50(1), (2)(a)) and making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station (s 50(2)(b)). The notification must be acknowledged in writing (s 50(4)) and in such form as the Secretary of State may direct (s 50(5)). The person making the notification must, for the purpose of verifying the person's identity and if requested to do so by the police officer or person to whom the notification is made, allow the officer or person to take the person's fingerprints (s 50(6)(a)), photograph (which includes any process by means of which an image may be produced) any part of the person (ss 50(6)(b), 60) or do both these things (s 50(6)(c)). Failure without reasonable excuse to comply with s 50(6) is an offence: s 54(1)(a). As to the punishment of violations of s 50(6) see note 16.

For the purposes of s 50(2) a person's 'local police area' means:

- 923 (1) the police area in which the person's home address is situated (s 51(1)(a));
- 924 (2) in the absence of a home address, the police area in which the home address last notified is situated (s 51(1)(b)); or
- 925 (3) in the absence of a home address and of any such notification, the police area in which the court of trial (or, in relation to foreign proceedings and cases where the notification requirements apply because a notification order (see PARAS 586-587) has been made, the court by which the notification order was made) was situated (s 51(1)(c), Sch 4 para 8(d)).

'Home address' means, in relation to a person, the address of the person's sole or main residence in the United Kingdom or, where the person has no such residence, the address or location of a place in the United Kingdom where the person can regularly be found and, if there is more than one such place, such one of those places as the person may select: s 60. As to the meaning of 'United Kingdom' see PARA 9 note 2.

In s 51(1)(c) 'court of trial' means:

- 926 (a) the court by or before which the conviction or finding was made by virtue of which the notification requirements apply to the person (s 51(2)(a)); or
- 927 (b) if that conviction or finding was one substituted on an appeal or reference, the court by or before which the proceedings were taken from which the appeal or reference was brought (s 51(2)(b)).

As to the modified application of s 51(1)(c) in relation to service offences see Sch 6 para 10.

4 Counter-Terrorism Act 2008 s 47(2)(a).

5 Counter-Terrorism Act 2008 s 47(2)(b).

6 Counter-Terrorism Act 2008 s 47(2)(c).

7 Counter-Terrorism Act 2008 s 47(2)(d).

8 Counter-Terrorism Act 2008 s 47(2)(e).

9 Counter-Terrorism Act 2008 s 47(2)(f).

10 Counter-Terrorism Act 2008 s 47(2)(g).

11 Counter-Terrorism Act 2008 s 47(2)(h), (3). At the date at which this volume states the law no regulations had been made for these purposes.

12 See the Counter-Terrorism Act 2008 s 49(1), which requires a person to whom the notification requirements apply to re-notify to the police the information mentioned in s 47(2) (see the text and notes 4-11)

within the period of one year after last notifying or re-notifying the information to the police in accordance with s 47 or s 49, one year after last notifying changes in accordance with s 48 (see PARA 579) or one year after last notifying information to the police on the person's return to the United Kingdom in accordance with s 56 (see PARA 584).

13 If unless the one-year period referred to in s 49(1) (see the text and note 12) ends at a time when the person is remanded in or committed to custody by an order of a court (s 49(2)(a)), serving a sentence of imprisonment or detention (s 49(2)(b)), detained in a hospital (s 49(2)(c)) or detained under the Immigration Acts (s 49(2)(d)). As to the modified application of s 49(2) in relation to service offences see Sch 6 para 8(1)(c).

14 Counter-Terrorism Act 2008 ss 48(4), 49(3). Any such notification must be accompanied by re-notification of the other information mentioned in s 47(2): s 48(10). 'Release' from imprisonment or detention includes release on licence but not temporary release: s 60. As to the modified application of s 48(4) in relation to service offences see Sch 6 para 8(1)(b).

15 If a person to whom the notification requirements apply is absent from the United Kingdom for any period the period of absence does not affect the obligation under the Counter-Terrorism Act 2008 s 47 (s 55(1), (3)) unless the period of absence begins before the end of the period within which notification must be made under s 47 and the person's absence results from his removal from the United Kingdom, in which case s 47 does not apply (s 55(4)). If a person to whom the notification requirements apply is absent from the United Kingdom for any period s 49 does not apply if the period referred to in s 49(1) (see note 12) ends during the period of absence: s 55(7).

References in ss 55, 56 to a person's removal from the United Kingdom include:

- 928 (1) the person's removal from the United Kingdom in accordance with the Immigration Acts (s 55(9)(a));
- 929 (2) the person's extradition from the United Kingdom (s 55(9)(b)); or
- 930 (3) the person's transfer from the United Kingdom to another country (which includes a territory) pursuant to a warrant under the Repatriation of Prisoners Act 1984 s 1 (Counter-Terrorism Act 2008 ss 55(9)(c), 60).

16 Counter-Terrorism Act 2008 s 54(1)(a), (b). A person guilty of an offence under s 58 is liable on conviction on indictment to imprisonment for a term not exceeding five years or a fine or both or on summary conviction to imprisonment for a term not exceeding 12 months (or, in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1), six months) or a fine not exceeding the statutory maximum or both: Counter-Terrorism Act 2008 s 54(2), (3).

A person who fails without reasonable excuse to comply with s 47, s 48, s 49, regulations under s 52(1), or s 56 commits the offence under s 54(1)(a) on the day on which he first fails without reasonable excuse to comply with the provision in question and continues to commit it throughout any period during which the failure continues (although a person must not be prosecuted under s 54(1) more than once in respect of the same failure): s 54(4).

Proceedings for an offence under s 54 may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found: s 54(5).

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580. Notification of changes.

A person to whom the notification requirements apply¹ must notify the police²:

- 1930 (1) of any name he uses that has not previously been notified to the police³;
- 1931 (2) if there is a change of his home address, of the new home address⁴;
- 1932 (3) if he resides or stays for specified minimum periods⁵ at premises in the United Kingdom⁶ the address of which has previously not been notified to the police, of the address of those premises⁷;
- 1933 (4) if he is released from custody, imprisonment or detention⁸; and
- 1934 (5) if he is required to notify prescribed information⁹, of the prescribed¹⁰ details of any prescribed changes in that information¹¹.

Notification of changes under these provisions affects the annual re-notification schedule¹², and the requirement to notify changes is itself affected by periods of absence from the United Kingdom¹³. Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with these requirements is an offence¹⁴.

1 Ie a person to whom the notification requirements in the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) (see PARA 576 et seq) apply.

2 Ie before the end of the period of three days beginning with the day on which the event in question occurs: Counter-Terrorism Act 2008 s 48(7) (note, however, s 48(3), and note 5). In determining the period within which notification is to be made under s 48 there must be disregarded any time when the person is remanded in or committed to custody by an order of a court (s 48(8)(a)), serving a sentence of imprisonment or detention (s 48(8)(b)), detained in a hospital (s 48(8)(c)) or detained under the Immigration Acts (s 48(8)(d)). As to the meaning of 'detained in a hospital', and as to the Immigration Acts, see PARA 579 note 2.

As to the means of notification see PARA 579 note 3 (noting s 50(3); and note 7). Notification under s 48 must be accompanied by re-notification of the other information mentioned in s 47(2) (see PARA 579): s 48(10). In connection with service detention see PARA 578 note 15; and as to the modified application of s 48(8) in relation to service offences see Sch 6 para 8(1)(b). 'Service offence' is defined for the purposes of the Counter-Terrorism Act 2008 by s 95: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

3 Counter-Terrorism Act 2008 s 48(1). References in s 48 to previous notifications are to previous notifications by the person under s 47 (initial notification: see PARA 579), s 48, s 49 (periodic re-notification: see PARA 579) or s 56 (notification on return after absence from United Kingdom: see PARA 584): s 48(9).

4 Counter-Terrorism Act 2008 s 48(2). As to the meaning of 'home address' see PARA 579 note 3.

5 Ie for a period of seven days (Counter-Terrorism Act 2008 s 48(3)(a)) or for two or more periods, in any period of 12 months, that taken together amount to seven days (s 48(3)(b)). Where s 48(3) applies the end of the period of three days beginning with the day on which the event in question occurs for the purposes of s 48(7) (see note 2) is the day with which the period referred to in s 48(3)(a) or s 48(3)(b) (as the case may be) ends: s 48(7).

6 As to the meaning of 'United Kingdom' see PARA 9 note 2.

7 Counter-Terrorism Act 2008 s 48(3). A person making a notification under s 48 in relation to premises referred to in s 48(3) may make the notification at a police station that would be a police station in his local police area for the purposes of s 50(2)(a) (see PARA 579 note 3) if the address of those premises were the person's home address: s 50(3).

8 Counter-Terrorism Act 2008 s 48(4). As to the meaning of 'release' see PARA 579 note 14. The notification requirements arise under this provision if a person is released from custody pursuant to an order of a court (s 48(4)(a)), from imprisonment or detention pursuant to a sentence of a court (s 48(4)(b)), from detention in a hospital (s 48(4)(c)) or from detention under the Immigration Acts (s 48(4)(d)); however s 48(4) does not apply if the person is at the same time required to notify the police under s 47 (initial notification: see PARA 579) (s 48(4)). As to the meaning of 'detained in a hospital' see PARA 579 note 2. As to the Immigration Acts see the UK Borders Act 2007 s 61(2); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**. As to the modified application of the Counter-Terrorism Act 2008 s 48(4) in relation to service offences see Sch 6 para 8(2).

9 le information within the Counter-Terrorism Act 2008 s 47(2)(h): see PARA 579.

10 le prescribed by regulations made by the Secretary of State: Counter-Terrorism Act 2008 s 48(6). At the date at which this volume states the law no regulations had been made for these purposes.

11 Counter-Terrorism Act 2008 s 48(5).

12 See the Counter-Terrorism Act 2008 s 49; and PARA 579.

13 If a person to whom the notification requirements apply is absent from the United Kingdom for any period s 48 applies in relation to an event that occurs before the period of absence (subject to the proviso that this does not apply in relation to an event that occurs before the period of absence if the period of absence begins before the end of the period within which notification must be made under s 48 and the person's absence results from the person's removal from the United Kingdom), but s 48 does not apply in relation to an event that occurs during the period of absence: s 55(1), (5), (6). As to references to removal from the United Kingdom see PARA 579 note 15.

14 Counter-Terrorism Act 2008 s 54(1)(a), (b). As to the punishment of violations of s 48 see PARA 579 note 16.

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581. Foreign travel: notification of departure.

If a person to whom the notification requirements apply¹ intends to leave the United Kingdom² for a period of three days or more³ he must notify to the police:

- 1935 (1) the date on which he intends to leave the United Kingdom⁴;
- 1936 (2) the country (or, if there is more than one, the first country) to which he will travel⁵;
- 1937 (3) his point of arrival⁶ in that country⁷;
- 1938 (4) where he intends to travel to more than one country outside the United Kingdom, his point of arrival⁸ in each such country⁹;
- 1939 (5) the name of the carrier the person intends to use to leave the United Kingdom and to return to the United Kingdom¹⁰;
- 1940 (6) the name of any carrier the person intends to use to travel between countries while outside the United Kingdom¹¹;
- 1941 (7) the address or other place at which the person intends to stay for their first night outside the United Kingdom¹²;
- 1942 (8) where the person intends to return to the United Kingdom on a particular date, that date¹³; and
- 1943 (9) where the person intends to return to the United Kingdom at a particular point of arrival, that point of arrival¹⁴.

Where a person knows any of the required information more than seven days before the date of his intended departure, he must notify such of the required information as he holds not less than seven days before that date¹⁵ or, if he has a reasonable excuse for not complying with the seven day notification requirement, as soon as practicable but in any event not less than twenty-four hours before that date¹⁶. Where a person has so notified the police¹⁷ but the information so notified does not contain all the required information¹⁸ or at any time prior to his intended departure, the information so notified becomes inaccurate¹⁹, he must notify to the police the remaining required information or the changes to the required information as the case may be prior to departure²⁰; similarly, where a person does not know any of the required information more than seven days before the date of his intended departure, he must notify the required information to the police²¹ prior to departure²².

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with these requirements is an offence²³.

1 If a person to whom the notification requirements in the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) (see PARA 576 et seq) apply.

2 As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(1). These regulations are made under the Counter-Terrorism Act 2008 s 52, pursuant to which the Secretary of State may by regulations make provision requiring a person to whom the notification requirements apply who leaves the United Kingdom to notify the police of their departure before they leave and to notify the police of their return if they subsequently return to the United Kingdom: s 52(1). Notification under s 52 must be given in accordance with the regulations: s 52(4).

4 Counter-Terrorism Act 2008 s 52(2)(a); Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(2), (3)(a).

5 Counter-Terrorism Act 2008 s 52(2)(b). As to the meaning of 'country' see PARA 534 note 12.

6 Where a person will arrive in a country by rail, sea or air, the point of arrival is the station, port or airport at which the person will first disembark (Counter-Terrorism Act 2008 s 52(2)(c); Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 2(1), (2)); and where a person will arrive in a country by any other means, the point of arrival is the place at which the person will first enter the country (reg 2(3)).

7 Counter-Terrorism Act 2008 s 52(2)(c).

8 Ie other than the point of arrival specified in the Counter-Terrorism Act 2008 s 52(2)(c) (see the text and notes 6-7).

9 Counter-Terrorism Act 2008 s 52(2)(d); Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(i). The information required to be notified pursuant to reg 3(3)(b)(i)-(vi) (see the text and notes 10-14) is required to be notified only inasmuch as that information is held by the person in question: reg 3(3)(b).

10 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(ii). As to the extent of notification under this requirement see note 9.

11 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(iii). As to the extent of notification under this requirement see note 9.

12 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(iv). As to the extent of notification under this requirement see note 9.

13 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(v). As to the extent of notification under this requirement see note 9.

14 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(vi). As to the extent of notification under this requirement see note 9.

15 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(1)(a). This is referred to as the 'seven day notification requirement': reg 4(1)(a). Notification in accordance with reg 4(1)-(3) or reg 5(2) (see PARA 582) must be made by the person attending at a police station (which in the case of notifications under reg 4(1) or reg 5(2) must be in the person's local police area) (reg 6(1)(a), (2)(a)) and making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station (reg 6(1)(b), (2)(b)). The person making a notification must inform the police officer or person to whom the notification is made of his name, home address and date of birth: reg 6(3).

16 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(1)(b). As to the means of notification see note 15.

17 Ie in accordance with the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(1) (see the text and notes 15-16).

18 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(2)(a). As to the means of notification see note 15. A person making a notification in accordance with reg 4(2) must also inform the police officer or person to whom the notification is made of the police station at which the person made a notification in accordance with reg 4(1) in respect of the intended departure: reg 6(4).

19 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(2)(b). As to the means of notification see note 15.

20 Ie in accordance with the rule in the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(4), which requires the person to make the relevant notification under reg 4(2) or reg 4(3) (as the case may be) not less than twenty-four hours before the date of his intended departure (the 'twenty-four hour notification requirement') (reg 4(4)(a)) or, if he has a reasonable excuse for not complying with the twenty-four hour notification requirement, as soon as practicable but in any event before the person's departure from the United Kingdom (reg 4(4)(b)).

21 See note 20.

22 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4(3). As to the means of notification see note 15.

23 Counter-Terrorism Act 2008 s 54(1)(a), (b). As to the punishment of violations of these provisions see PARA 579 note 16.

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582. Foreign travel: notification of return.

If a person to whom the notification requirements apply¹ returns to the United Kingdom² after leaving the United Kingdom for a period of three days or more³ he must notify to the police⁴, within the period of three days beginning with the day on which he returns to the United Kingdom, the date of his return⁵ and his point of arrival in the United Kingdom⁶. This requirement does not, however, apply if the person has previously given notification⁷ of his date and point of arrival⁸ and his return to the United Kingdom was on that date and at that point of arrival⁹.

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with these requirements is an offence¹⁰.

1 Ie a person to whom the notification requirements in the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) (see PARA 576 et seq) apply.

2 As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 5(1). These regulations are made under the Counter-Terrorism Act 2008 s 52: see PARA 581 note 3.

4 As to the means of notification see PARA 581 note 15.

5 Counter-Terrorism Act 2008 s 52(3); Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 5(2), (3)(a).

6 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 5(3)(b).

7 Ie in accordance with the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 4 (see PARA 581).

8 Ie as specified in the Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 3(3)(b)(v), (vi) (see PARA 581).

9 Counter-Terrorism Act 2008 (Foreign Travel Notification Requirements) Regulations 2009, SI 2009/2493, reg 5(4).

10 Counter-Terrorism Act 2008 s 54(1)(a), (b). As to the punishment of violations of these provisions see PARA 579 note 16.

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583. Period for which notification requirements apply.

The period for which the notification requirements¹ apply depends on the age of the person at the time of his conviction and the sentence he receives in respect of his offence². If a person is aged under 18 at the time of conviction for the offence the period for which the notification requirements apply is ten years, whatever his sentence³. If he is aged 18 or over at the time of conviction and receives in respect of the offence a sentence of imprisonment or detention in a young offender institution for a term of five years or more but less than ten years, the period for which the notification requirements apply is 15 years⁴. Finally, the period for which the notification requirements apply is 30 years if the offender is aged 18 or over at the time of conviction and receives in respect of the offence a sentence of:

- 1944 (1) imprisonment or custody for life⁵;
- 1945 (2) imprisonment or detention in a young offender institution for a term of ten years or more⁶;
- 1946 (3) imprisonment or detention in a young offender institution for public protection⁷; or
- 1947 (4) detention during Her Majesty's pleasure⁸.

The period for which the notification requirements apply begins with the day on which the person is dealt with for the offence⁹, and continues to run during any period of absence from the United Kingdom¹⁰. Provision is made for determining the length of the period in respect of persons sentenced to consecutive¹¹ and concurrent¹² terms of imprisonment, the extent of the period resulting from a finding of disability¹³, whether the period has expired¹⁴ and the period for which the notification requirements apply where a sentence has been varied¹⁵.

These provisions apply in a modified form to persons being dealt with for service offences¹⁶.

1 As to the notification requirements in respect of terrorism offences see the Counter-Terrorism Act 2008 ss 47-52; and PARAS 579-582. As to the persons who may be the subject of notification requirements see PARAS 576-578.

2 See the Counter-Terrorism Act 2008 s 53; and the text and notes 3-9. In relation to foreign proceedings and cases where the notification requirements apply because a notification order (see PARAS 586-587) has been made, a reference in s 53 to a sentence or order of any description is to be read as a reference to an equivalent sentence or order of the foreign court: Sch 4 para 8(e).

3 Counter-Terrorism Act 2008 s 53(1)(c).

4 Counter-Terrorism Act 2008 s 53(1)(b), (3)(a). As to detention in a young offender institution see PARA 85 et seq. Corresponding provision is made in respect of persons convicted in Scotland and Northern Ireland: see s 53(3)(b), (c).

5 Counter-Terrorism Act 2008 s 53(1)(a), (2)(a). As to imprisonment and custody for life see PARAS 68 et seq, 79. Corresponding provision is made in respect of persons convicted in Scotland and Northern Ireland: see s 53(2)(b), (c).

6 Counter-Terrorism Act 2008 s 53(2)(b).

7 Counter-Terrorism Act 2008 s 53(2)(c). As to such imprisonment or detention see the Criminal Justice Act 2003 s 225; and PARAS 73, 74.

8 Counter-Terrorism Act 2008 s 53(2)(d). As to detention during Her Majesty's pleasure see PARA 81.

9 Counter-Terrorism Act 2008 s 53(4). As to when a person is being 'dealt with' for an offence, and as to the time at which a person is dealt with for an offence, see PARA 577 notes 1, 2.

10 Counter-Terrorism Act 2008 s 55(1), (2).

11 For the purposes of determining the length of the period for which the notification requirements apply a person who has been sentenced in respect of two or more offences to which the Counter-Terrorism Act 2008 Pt 4 (ss 40-61) (see PARA 576) applies to consecutive terms of imprisonment is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to the aggregate of the terms: s 53(6)(a).

12 For the purposes of determining the length of the period for which the notification requirements apply a person who has been sentenced in respect of two or more offences to which the Counter-Terrorism Act 2008 Pt 4 applies to concurrent terms of imprisonment (X and Y) that overlap for a period (Z) is treated as if sentenced, in respect of each of the offences, to a term of imprisonment equal to X plus Y minus Z: s 53(6)(b).

13 If a person who is the subject of a finding within the Counter-Terrorism Act 2008 s 45(1)(b)(iii), (2)(b)(iii) or (3)(b)(iii) (finding of disability, etc: see PARA 578) is subsequently tried for the offence, the period resulting from that finding ends either at the conclusion of the trial (if the person is acquitted) (s 53(5)(a)) or when the person is again dealt with in respect of the offence (if he is convicted) (s 53(5)(b)). For the purposes of s 53(5)(b) a person is treated as dealt with at the time of the original decision (see PARA 577 note 2) and any subsequent variation of the decision is disregarded: s 61(4)(d). As to the meaning of 'variation' see PARA 585 note 3.

14 In determining whether the period has expired there must be disregarded any period when the person was remanded in or committed to custody by an order of a court (s 53(7)(a)), serving a sentence of imprisonment or detention (s 53(7)(b)), detained in a hospital (s 53(7)(c)) or detained under the Immigration Acts (s 53(7)(d)). If a person to whom the notification requirements apply is absent from the United Kingdom for any period s 53(7) applies in relation to the period of absence as if it referred to any period when the person was:

- 931 (1) remanded in or committed to custody by an order of a court outside the United Kingdom (s 55(8)(a));
- 932 (2) serving a sentence of imprisonment or detention imposed by such a court (s 55(8)(b));
- 933 (3) detained in a hospital pursuant to an order of such a court that is equivalent to a hospital order (s 55(8)(c)); or
- 934 (4) subject to a form of detention outside the United Kingdom that is equivalent to detention under the Immigration Acts (s 55(8)(d)).

As to the meaning of 'hospital order' see PARA 577 note 1. As to the meaning of 'detained in a hospital', and as to the Immigration Acts, see PARA 579 note 2. As to the modified application of the Counter-Terrorism Act 2008 s 53(7) in relation to service offences see Sch 6 para 8(1)(d). 'Service offence' is defined for the purposes of the Counter-Terrorism Act 2008 by s 95: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

15 See the Counter-Terrorism Act 2008 s 61(3)(d); and PARA 585.

16 See the Counter-Terrorism Act 2008 Sch 6 paras 7, 12(c), 13; and in connection with service detention see PARA 578 note 15.

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584. Notification on return to United Kingdom.

If before the end of the period for which the notification requirements apply¹ a person to whom the requirements apply² returns to the United Kingdom³ after a period of absence and that person was not required⁴ to make an initial notification⁵, there has been a change to any of the information last notified⁶ to the police⁷ and period after which re-notification is required⁸ ended during the period of absence⁹, the person must notify or (as the case may be) re-notify to the police the information required to be notified on initial notification¹⁰ within the period of three days beginning with the day of return¹¹.

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with these requirements is an offence¹²: however these requirements do not apply if:

- 1948 (1) the person subsequently leaves the United Kingdom¹³;
- 1949 (2) the period of absence begins before the end of the period within which notification must be made under these provisions¹⁴; and
- 1950 (3) the person's absence results from the person's removal from the United Kingdom¹⁵.

1 As to the notification requirements in respect of terrorism offences see the Counter-Terrorism Act 2008 ss 47-52; and PARAS 579-582. As to the period for which the notification requirements apply see PARA 583.

2 As to the persons who may be the subject of notification requirements see PARAS 576-578.

3 As to the meaning of 'United Kingdom' see PARA 9 note 2.

4 Ie under the Counter-Terrorism Act 2008 s 47: see PARA 579.

5 Counter-Terrorism Act 2008 s 56(1)(a).

6 Ie in accordance with the Counter-Terrorism Act 2008 s 47 (see PARA 579), s 48 (notification of changes: see PARA 580), s 49 (periodic re-notification: see PARA 579), or s 56 (see the text and notes 7-15).

7 Counter-Terrorism Act 2008 s 56(1)(b).

8 Ie the period referred to in the Counter-Terrorism Act 2008 s 49(1): see PARA 579.

9 Counter-Terrorism Act 2008 s 56(1)(c).

10 Ie the information mentioned in the Counter-Terrorism Act 2008 s 47(2): see PARA 579.

11 Counter-Terrorism Act 2008 s 56(2). The obligation under s 56 does not affect any obligation to notify information under s 52(3) (regulations requiring notification of return etc: see PARA 582): s 56(5). In determining the period within which notification is to be made under these provisions there must be disregarded any time when the person is remanded in or committed to custody by an order of a court (s 56(3)(a)), serving a sentence of imprisonment or detention (s 56(3)(b)), detained in a hospital (s 56(3)(c)) or detained under the Immigration Acts (s 56(3)(d)). As to the meaning of 'detained in a hospital', and as to the Immigration Acts, see PARA 579 note 2. In connection with service detention see PARA 578 note 15; and as to the modified application of the Counter-Terrorism Act 2008 s 56(3) in relation to service offences see Sch 6 para 8(1)(e). 'Service offence' is defined for the purposes of the Counter-Terrorism Act 2008 by s 95: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

12 Counter-Terrorism Act 2008 s 54(1)(a), (b). As to the punishment of violations of these provisions see PARA 579 note 16.

13 Counter-Terrorism Act 2008 s 56(4)(a).

14 Counter-Terrorism Act 2008 s 56(4)(b).

15 Counter-Terrorism Act 2008 s 56(4)(c). As to references to removal from the United Kingdom see PARA 579 note 15.

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585. Disapplication and variation of requirements on variation of decision.

Where the notification requirements apply¹ and the original decision (ie the dealing with the person for the offence²) is varied³, on appeal or otherwise, then:

- 1951 (1) if the result is that the conditions for application of the notification requirements to a person in respect of an offence cease to be met (and a conviction of, or finding in relation to, a different offence is not substituted⁴), the notification requirements are treated as never having applied to that person in respect of that offence⁵;
- 1952 (2) if the result is that the conditions for application of the notification requirements to a person in respect of an offence are met where they were not previously met (and a conviction of, or finding in relation to, a different offence is not substituted⁶), the person is treated as dealt with for the offence when the variation takes place⁷ and the notification requirements apply accordingly⁸;
- 1953 (3) if a conviction of, or finding in relation to, a different offence is substituted⁹, and the conditions for application of the notification requirements were met in respect of the original offence and are also met in respect of the substituted offence¹⁰, the person is treated as if he had been dealt with for the substituted offence at the time of the original decision¹¹;
- 1954 (4) if the sentence is varied so as to become one by virtue of which the notification requirements would apply for a different period, the period for which those requirements apply is to be determined as if the sentence as varied had been imposed at the time of the original decision¹²; and
- 1955 (5) in any other case, the variation is disregarded¹³.

1 As to the notification requirements in respect of terrorism offences see the Counter-Terrorism Act 2008 ss 47-52; and PARAS 579-582. As to the persons who may be the subject of notification requirements see PARAS 576-578.

2 See the Counter-Terrorism Act 2008 s 61(2); and PARA 577 note 2.

3 References in the Counter-Terrorism Act 2008 s 61 to the variation of a decision include any proceedings by which the decision is altered, set aside or quashed, or in which a further decision is come to following the setting aside or quashing of the decision: s 61(7).

4 Ie the Counter-Terrorism Act 2008 s 61(3)(c) (see the text and notes 9-11) does not apply.

5 Counter-Terrorism Act 2008 s 61(3)(a).

6 See note 3.

7 Counter-Terrorism Act 2008 s 61(3)(b)(i).

8 Counter-Terrorism Act 2008 s 61(3)(b)(ii).

9 Counter-Terrorism Act 2008 s 61(3)(c)(i).

10 Counter-Terrorism Act 2008 s 61(3)(c)(ii).

11 Counter-Terrorism Act 2008 s 61(3)(c).

- 12 Counter-Terrorism Act 2008 s 61(3)(d).
- 13 Counter-Terrorism Act 2008 s 61(3)(e).

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C. PERSONS DEALT WITH OUTSIDE THE UNITED KINGDOM

586. Notification orders.

A 'notification order' is an order applying the notification requirements¹ to a person who has been dealt with outside the United Kingdom² in respect of a corresponding foreign offence³, that is to say, constituted an offence under the law in force in a country outside the United Kingdom⁴ and corresponds to an applicable terrorism offence⁵. The effect of a notification order is that the notification requirements⁶ apply to the person in respect of whom it is made⁷.

Notification orders may only be made on application to the High Court⁸ by a chief officer of police⁹, and the High Court must make the order if it is proved on such an application that the conditions for making the order¹⁰ are met¹¹.

1 Ie the requirements of the Counter-Terrorism Act 2008 Pt 4 (ss 40-61): see PARA 576 et seq. As to the notification requirements in respect of terrorism offences see ss 47-52; and PARAS 579-582. As to the persons who may be the subject of notification requirements see PARAS 576-578.

2 As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Counter-Terrorism Act 2008 Sch 4 para 1.

4 Counter-Terrorism Act 2008 Sch 4 para 2(1)(a). As to the meaning of 'country' see PARA 579 note 15. For this purpose an act punishable under the law in force in a country outside the United Kingdom is regarded as constituting an offence under that law however it is described in that law: Sch 4 para 2(2).

5 Counter-Terrorism Act 2008 Sch 4 para 2(1)(b). An 'applicable terrorism offence' is an offence to which Pt 4 applies (see PARA 577), and an act corresponds to an offence to which Pt 4 applies if it would have constituted an offence to which Pt 4 applies by virtue of s 41 if it had been done in any part of the United Kingdom (Sch 4 para 2(3)(a)) or it was, or took place in the course of, an act of terrorism or was done for the purposes of terrorism (Sch 4 para 2(3)(b)). As to the establishment and rebuttal of these conditions see Sch 4 para 2(4); and PARA 587 note 4. As to the meaning of 'terrorism' see PARA 576 note 1.

6 Ie the requirements of the Counter-Terrorism Act 2008 Pt 4.

7 Counter-Terrorism Act 2008 Sch 4 para 7.

8 Counter-Terrorism Act 2008 Sch 4 para 4(3).

9 Counter-Terrorism Act 2008 Sch 4 para 4(1). An application may only be made if the person resides in the chief officer's police area (Sch 4 para 4(2)(a)) or the chief officer believes that the person is in, or is intending to come to, that area (Sch 4 para 4(2)(b)). Corresponding provision is made in respect of applications in Scotland and Northern Ireland: see Sch 4 paras 5, 6.

10 Ie the conditions in the Counter-Terrorism Act 2008 Sch 4 para 3(2), (4), (5): see PARA 587.

11 Counter-Terrorism Act 2008 Sch 4 para 3(6).

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587. Conditions for making notification orders.

The first condition for making a notification order¹ in respect of a person is that under the law in force in a country² outside the United Kingdom³ either the person has been convicted of a corresponding foreign offence⁴ and has received an equivalent sentence⁵ in respect of it⁶ or a court exercising jurisdiction under that law has, in respect of a corresponding foreign offence, convicted the person or made a finding⁷ of insanity or disability⁸ and made the person subject to an order equivalent to a hospital order⁹; however this condition is not met if there was a flagrant denial of the person's right to a fair trial¹⁰.

The second condition is either that the sentence was imposed or order made after 1 October 2009¹¹ or it was imposed or made before that date and immediately before then the person was imprisoned or detained in pursuance of the sentence or order¹², would have been so imprisoned or detained but for being unlawfully at large or otherwise unlawfully absent, lawfully absent on a temporary basis or on bail pending an appeal¹³, or had been released on licence, or was subject to an equivalent form of supervision, having served the whole or part of a sentence of imprisonment for the offence¹⁴.

The third condition is that the period for which the notification requirements would apply in respect of the offence¹⁵ has not expired¹⁶.

1 See PARA 586.

2 As to the meaning of 'country' see PARA 579 note 15.

3 As to the meaning of 'United Kingdom' see PARA 9 note 2.

4 As to the meaning of 'corresponding foreign offence' see the Counter-Terrorism Act 2008 Sch 4 para 2(1)-(3); and PARA 586. On an application for a notification order the condition in Sch 4 para 2(3)(a) or (b) (ie the requirement that the offence corresponds to a United Kingdom offence specified in s 41) is to be taken to be met unless the defendant serves on the applicant, not later than rules of court may provide, a notice stating that, on the facts as alleged with respect to the act concerned, the condition is not in the defendant's opinion met, showing the defendant's grounds for that opinion, and requiring the applicant to prove that the condition is met (Sch 4 para 2(4)(a)) or the court permits the defendant to require the applicant to prove that the condition is met without service of such a notice (Sch 4 para 2(4)(b)).

5 Ie a sentence equivalent to a sentence mentioned in the Counter-Terrorism Act 2008 s 45(1)(a), (2)(a) or (3)(a) (see PARA 578): Sch 4 para 3(2)(a).

6 Counter-Terrorism Act 2008 Sch 4 para 3(1), (2)(a).

7 Ie a finding in relation to the person equivalent to a finding mentioned in the Counter-Terrorism Act 2008 s 45(1)(b)(ii) or (iii), (2)(b)(ii) or (iii) or (3)(b)(ii) or (iii) (see PARA 578): Sch 4 para 3(2)(b)(i).

8 Counter-Terrorism Act 2008 Sch 4 para 3(2)(b)(i).

9 Counter-Terrorism Act 2008 Sch 4 para 3(2)(b)(ii). As to the meaning of 'hospital order' see PARA 577 note 1.

10 Counter-Terrorism Act 2008 Sch 4 para 3(3).

11 Counter-Terrorism Act 2008 Sch 4 para 3(4)(a). 1 October 2009 is the date on which Pt 4 (ss 40-61) (see PARA 576 et seq) was brought into force by the Counter-Terrorism Act 2008 (Commencement No 4) Order 2009, SI 2009/1493.

- 12 Counter-Terrorism Act 2008 Sch 4 para 3(4)(b)(i).
- 13 Counter-Terrorism Act 2008 Sch 4 para 3(4)(b)(ii).
- 14 Counter-Terrorism Act 2008 Sch 4 para 3(4)(b)(iii).
- 15 le in accordance with the Counter-Terrorism Act 2008 s 53 as modified by Sch 4 para 8(e): see PARA 583.
- 16 Counter-Terrorism Act 2008 Sch 4 para 3(5).

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D. FOREIGN TRAVEL RESTRICTION ORDERS

588. Foreign travel restriction orders.

A 'foreign travel restriction order' is an order prohibiting the person to whom it applies from doing whichever of the following is specified in the order:

- 1956 (1) travelling to a country¹ outside the United Kingdom² named or described in the order³;
- 1957 (2) travelling to any country outside the United Kingdom other than a country named or described in the order⁴; and
- 1958 (3) travelling to any country outside the United Kingdom⁵.

Foreign travel restriction orders may only be made by complaint to a magistrates' court⁶ by a chief officer of police⁷, and the court may make the order if it is satisfied on such an application that the conditions for making the order⁸ are met⁹. Orders have effect for a fixed period of not more than six months¹⁰, specified in the order¹¹. A person against whom a foreign travel restriction order is made may appeal to the Crown Court against the making of the order¹². A person who fails to comply with a foreign travel restriction order¹³ commits an offence¹⁴.

1 As to the meaning of 'country' see PARA 579 note 15.

2 As to the meaning of 'United Kingdom' see PARA 9 note 2.

3 Counter-Terrorism Act 2008 s 58(a), Sch 5 paras 1(a), 6(1)(a).

4 Counter-Terrorism Act 2008 s 58(b), Sch 5 paras 1(b), 6(1)(b).

5 Counter-Terrorism Act 2008 s 58(c), Sch 5 paras 1(c), 6(1)(c). A foreign travel restriction order containing a prohibition within Sch 5 para 6(1)(c) must require the person to whom it applies to surrender all that person's passports, at a police station specified in the order on or before the date when the prohibition takes effect or within a period specified in the order: Sch 5 para 6(3). 'Passport' means a United Kingdom passport within the meaning of the Immigration Act 1971 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 78) or a passport issued by or on behalf of the authorities of a country outside the United Kingdom or by or on behalf of an international organisation, and includes any document that can be used (in some or all circumstances) instead of a passport (Counter-Terrorism Act 2008 s 60), and any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel restriction order containing such a prohibition (Sch 5 para 6(4)).

6 Counter-Terrorism Act 2008 Sch 5 para 3(3). The application must be made to a magistrates' court whose commission area includes any part of the chief officer's police area: Sch 5 para 3(3).

7 Counter-Terrorism Act 2008 Sch 5 para 3(1). An application may only be made if the person resides in the chief officer's police area (Sch 5 para 3(2)(a)) or the chief officer believes that the person is in, or is intending to come to, that area (Sch 5 para 3(2)(b)). Corresponding provision is made in respect of applications in Scotland and Northern Ireland: see Sch 5 paras 4, 5.

8 Ie the conditions in the Counter-Terrorism Act 2008 Sch 5 para 2(2), (3): see PARA 589.

9 Counter-Terrorism Act 2008 Sch 5 para 2(5).

10 Counter-Terrorism Act 2008 Sch 5 para 7(1).

11 Counter-Terrorism Act 2008 Sch 5 para 7(2). A foreign travel restriction order ceases to have effect if a court (whether the same or another court) makes another foreign travel restriction order in relation to the person to whom the earlier order applies: Sch 5 para 7(3).

12 Counter-Terrorism Act 2008 Sch 5 para 12(1)(a), (2). On an appeal under Sch 5 the court may make such orders as it considers necessary to give effect to its determination of the appeal and such incidental and consequential orders as appear to it to be just: Sch 5 para 12(3). Corresponding provision is made in respect of applications in Scotland and Northern Ireland: see Sch 5 paras 13, 14.

13 Is a person who does anything he is prohibited from doing by a foreign travel restriction order or fails to comply with a requirement imposed on them by such an order: Counter-Terrorism Act 2008 Sch 5 para 15(1)(a), (b).

14 Counter-Terrorism Act 2008 s 15(1). A person guilty of an offence under Sch 5 para 15 is liable on conviction on indictment to imprisonment for a term not exceeding five years or a fine or both or on summary conviction to imprisonment for a term not exceeding 12 months (or, in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1), six months) or a fine not exceeding the statutory maximum or both: Counter-Terrorism Act 2008 Sch 5 para 15(2), (3). Where a person is convicted of an offence under Sch 5 para 15 it is not open to the court by or before which he is convicted to make an order for conditional discharge (see PARA 40) in respect of the offence: Sch 5 para 15(4).

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589. Conditions for making foreign travel restriction orders.

A foreign travel restriction order¹ may be made in respect of a person if the notification requirements² apply to him³ and his behaviour since he was dealt with for the offence⁴ by virtue of which those requirements apply makes it necessary for a foreign travel restriction order to be made to prevent him from taking part in terrorism activity⁵ outside the United Kingdom⁶.

¹ See PARA 588.

² I.e. the requirements of the Counter-Terrorism Act 2008 Pt 4 (ss 40-61): see PARA 576 et seq. As to the notification requirements in respect of terrorism offences see ss 47-52; and PARAS 579-582. As to the persons who may be the subject of notification requirements see PARAS 576-578.

³ Counter-Terrorism Act 2008 Sch 5 para 2(1), (2).

⁴ As to when a person is being 'dealt with' for an offence, and as to the time at which a person is dealt with for an offence, see PARA 577 notes 1, 2. For these purposes a person is treated as dealt with at the time of the original decision and any subsequent variation of the decision is disregarded: s 61(4)(e). As to the meaning of 'variation' see PARA 585 note 3.

⁵ In the Counter-Terrorism Act 2008 Sch 5 'terrorism activity' means anything that would constitute an offence to which Pt 4 applies by virtue of s 41 (see PARA 577) if done in any part of the United Kingdom or is, or takes place in the course of, an act of terrorism or is for the purposes of terrorism: Sch 5 para 16. As to the meaning of 'United Kingdom' see PARA 9 note 2. As to the meaning of 'terrorism' see PARA 576 note 1.

⁶ Counter-Terrorism Act 2008 Sch 5 para 2(3). If the person was dealt with for the offence before 1 October 2009 (i.e. the date on which Pt 4 was brought into force by the Counter-Terrorism Act 2008 (Commencement No 4) Order 2009, SI 2009/1493) the condition in the Counter-Terrorism Act 2008 Sch 5 para 2(3) is not met unless the person has acted in that way since that date: Sch 5 para 2(4). For the purposes of Sch 5 para 2(4) a person is dealt with for an offence before 1 October 2009 if the time of the original decision (see PARA 577 note 2) falls before that date: s 61(5)(b). Where in such a case s 61(3) (see PARA 585) applies for the purposes of any provision of Pt 4, s 61(3) has effect as if the provisions of Pt 4 had been in force at all material times: s 61(5).

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590. Variation, renewal and discharge of orders.

A magistrates' court may make an order varying, renewing or discharging a foreign travel restriction order¹ if and to the extent that the court considers it appropriate so to do². Such orders may only be made on an application made by complaint to the court³ by either the chief officer of police⁴ or the person subject to the foreign travel restriction order⁵, and before making the order the court must hear the person making the application and (if they wish to be heard) the other persons entitled⁶ to make such an application⁷.

A foreign travel restriction order may be renewed, or varied so as to impose additional prohibitions⁸, only if it is necessary to do so for the purpose of preventing the person subject to the order from taking part in terrorism activities⁹ outside the United Kingdom¹⁰.

A person subject to a foreign travel restriction order may appeal to the Crown Court against an order¹¹ varying or renewing the order or a refusal to make an order¹² varying or discharging the foreign travel restriction order¹³.

1 As to foreign travel restriction orders see PARA 588.

2 Counter-Terrorism Act 2008 Sch 5 para 8(3). Corresponding provision is made in respect of applications in Scotland and Northern Ireland: see Sch 5 paras 9, 10.

3 I.e. a magistrates' court for the same area as the court that made the order, a magistrates' court for the area in which the person subject to the order resides or, where the application is made by a chief officer of police, any magistrates' court whose commission area includes any part of that chief officer's police area: Sch 5 para 8(2).

4 I.e. the chief officer of police on whose application the order was made, the chief officer of police for the area in which the person subject to the order resides or a chief officer of police who believes that the person subject to the order is in, or is intending to come to, the officer's police area: Sch 5 para 8(1)(b)-(d).

5 Counter-Terrorism Act 2008 Sch 5 para 8(1)(a).

6 I.e. by virtue of the Counter-Terrorism Act 2008 Sch 5 para 8(1) (see the text and notes 4-5).

7 Counter-Terrorism Act 2008 Sch 5 para 8(4).

8 Any renewed or varied order must contain only the prohibitions necessary for the purpose referred to in the Counter-Terrorism Act 2008 Sch 5 para 11(1) (see the text and notes 9-10): Sch 5 para 11(2).

9 As to the meaning of 'terrorism activity' see PARA 589 note 5.

10 Counter-Terrorism Act 2008 Sch 5 para 11(1). As to the meaning of 'United Kingdom' see PARA 9 note 2.

11 I.e. an order under the Counter-Terrorism Act 2008 Sch 5 para 8 (see the text and notes 1-7).

12 See note 11.

13 Counter-Terrorism Act 2008 Sch 5 para 12(1)(b), (2). As to the court's powers on an appeal under Sch 5 para 12 see PARA 588 note 12.

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(xi) Risk of Sexual Harm Orders

591. Application for risk of sexual harm order.

The police¹ may by complaint to a magistrates' court apply² for a risk of sexual harm order in respect of a person aged 18 or over residing in the relevant police area or a person who the police believe is in, or is intending to come to, the area if it appears to them that the person has on at least two occasions³:

- 1959 (1) engaged in sexual activity⁴ involving a child⁵ or in the presence of a child⁶;
- 1960 (2) caused or incited a child to watch a person engaging in sexual activity or to look at a moving or still image⁷ that is sexual⁸;
- 1961 (3) given a child anything that relates to sexual activity or contains a reference to such activity⁹; or
- 1962 (4) communicated with a child, where any part of the communication is sexual¹⁰,

and as a result there is reasonable cause to believe that it is necessary for such an order to be made¹¹.

On such application being made the court may make a risk of sexual harm order if it is satisfied that:

- 1963 (a) the defendant has on at least two occasions, whether before or after the 1 May 2004, done an act within heads (1) to (4) above¹²; and
- 1964 (b) it is necessary to make such an order, for the purpose of protecting children generally or any child from harm from the defendant¹³.

A defendant may appeal to the Crown Court against the making of a risk of sexual harm order¹⁴.

1 Although these provisions refer to a 'chief officer of police' in connection with the making of a applications for a risk of sexual harm order, the powers described in the text are exercisable by the police generally (ie by another suitable person to whom the chief officer has delegated his responsibility) (see *R (on the application of the Chief Constable of West Midlands Police) v Birmingham Justices* [2002] EWHC 1087 (Admin), [2003] Crim LR 37, [2002] 28 LS Gaz R 32), and it is therefore broadly correct to refer to the application having to be made by 'the police'. Determination of who is a suitable delegate is for the chief officer, and improper delegation is a matter for the courts: *R (Chief Constable of West Midlands Police) v Birmingham Justices*. This decision was made in relation to an application for an anti-social behaviour order (see PARA 304) but is equally applicable by its reasoning to an application for a risk of sexual harm order.

2 Applications made be made to any magistrates' court whose commission area includes any part of the applicant's police area (Sexual Offences Act 2003 s 123(2)(a)) or any place where it is alleged that the defendant acted in the way referred to in heads (1)-(4) in the text (s 123(2)(b)). As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. An application for a risk of sexual harm order may be in the form set out in the Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004, SI 2004/1053, Sch 1 (r 3(1)(a)), and a summons directed to the defendant requiring him to appear before a magistrates' court to answer an application for such an order may be in the form set out in Sch 2 (r 3(2)). As to proceedings for complaint and the evidential burden in applications for preventive orders see PARA 534 note 2.

3 ie whether before or after 1 May 2004 (the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874).

4 'Sexual activity' means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual: Sexual Offences Act 2003 s 124(1), (5).

5 'Child' means a person under 16: Sexual Offences Act 2003 s 124(3). As to proof of age see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1470. See also the Children and Young Persons Act 1933 s 99(2) (which provides that where a charge or indictment alleges that a person in respect of whom an offence has been committed is under a specified age, there is a rebuttable presumption that the person is under that age); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1243.

6 Sexual Offences Act 2003 ss 123(1)(a), (3)(a), 133(1).

7 'Image' means an image produced by any means, whether of a real or imaginary subject: Sexual Offences Act 2003 s 124(4).

8 Sexual Offences Act 2003 s 123(3)(b). An image is 'sexual' if any part of it relates to sexual activity (s 124(7)(a)) or a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the image is sexual (s 124(7)(b)).

9 Sexual Offences Act 2003 s 123(3)(c).

10 Sexual Offences Act 2003 s 123(3)(d). A communication is 'sexual' if any part of it relates to sexual activity (s 124(6)(a)) or a reasonable person would, in all the circumstances but regardless of any person's purpose, consider that any part of the communication is sexual (s 124(6)(b)).

11 Sexual Offences Act 2003 s 123(1)(b).

12 Sexual Offences Act 2003 s 123(4)(a).

13 Sexual Offences Act 2003 s 123(4)(b). 'Protecting children generally or any child from harm from the defendant' means protecting children generally or any child from physical or psychological harm caused by the defendant doing any of the acts in respect of which a risk of sexual harm order may be made (see heads (1)-(4) in the text): s 124(2).

A risk of sexual harm order must be in the form set out in the Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004, SI 2004/1053, Sch 3: r 3(3). As soon as reasonably practicable after a risk of sexual harm order has been made, the designated officer for the court must serve a copy of the order on the defendant: r 3(5) (amended by SI 2005/617). Any copy of an order so required to be sent must be either given to him in person or sent by post to his last known address and, if so given or sent, is deemed to have been received by him, unless the defendant proves that it was not received by him: Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004, SI 2004/1051, r 3(5) (as so amended).

14 See PARA 594.

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592. Effect of risk of sexual harm order.

A risk of sexual harm order¹ has effect for a fixed period of not less than two years specified in the order or until further order², and prohibits the defendant from doing anything described in it³. The only prohibitions that may be imposed are those necessary for the purpose of protecting children⁴ generally or any child from harm from the defendant⁵.

Provision is made for the variation, renewal or discharge of a risk of sexual harm order⁶.

1 As to applications for risk of sexual harm orders see PARA 591.

2 Sexual Offences Act 2003 s 123(5)(b). Where a risk of sexual harm order is made in relation to a person already subject to such an order, the earlier order ceases to have effect: s 123(7).

3 Sexual Offences Act 2003 s 123(5)(a).

4 As to the meaning of 'child' see PARA 591 note 5.

5 Sexual Offences Act 2003 s 123(5)(b). As to the meaning of 'protecting children generally or any child from harm from the defendant' see PARA 591 note 13.

6 See PARAS 596-598.

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593. Interim risk of sexual harm orders.

Where an application for a risk of sexual harm order¹ has not been determined², an application for an interim risk of sexual harm order may be made³ either in the complaint containing the main application⁴ or, if the main application has been made, by complaint to the court to which that application has been made by the person who made it⁵. The court may make an interim order if it considers it just to do so⁶. An interim order prohibits the defendant from doing anything described in it⁷. The duration of an interim order is a fixed period specified in the order⁸, and it ceases to have effect, if it has not already done so, on the determination of the main application⁹. The applicant or the defendant may by complaint apply to the court which made the interim order for it to be varied, renewed or discharged¹⁰. A defendant may appeal to the Crown Court against the making of an interim order¹¹.

1 As to applications for risk of sexual harm orders see PARA 591.

2 Sexual Offences Act 2003 s 126(1).

3 An application for an interim risk of sexual harm order may be in the form set out in the Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004, SI 2004/1053, Sch 1 (r 3(1)(b)), and a summons directed to the defendant requiring him to appear before a magistrates' court to answer an application for such an order may be in the form set out in Sch 2 (r 3(2)).

4 Sexual Offences Act 2003 ss 126(2)(a), 133(1).

5 Sexual Offences Act 2003 s 126(2)(b).

6 Sexual Offences Act 2003 s 126(3). An interim risk of sexual harm order must be in the form set out in the Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004, SI 2004/1053, Sch 4: r 3(4). As soon as reasonably practicable after a risk of sexual harm order has been made, the designated officer for the court must serve a copy of the order on the defendant: r 3(5) (amended by SI 2005/617). Any copy of an order so required to be sent must be either given to him in person or sent by post to his last known address and, if so given or sent, is deemed to have been received by him, unless the defendant proves that it was not received by him: Magistrates' Courts (Risk of Sexual Harm Orders) Rules 2004, SI 2004/1051, r 3(5) (as so amended).

7 Sexual Offences Act 2003 s 126(3). A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a risk of sexual harm prevention order or an interim order: see PARA 595.

8 Sexual Offences Act 2003 s 126(4)(a).

9 Sexual Offences Act 2003 s 126(4)(b).

10 Sexual Offences Act 2003 s 126(5). Any order made by the Crown Court on an appeal under s 127(1)(a) or (b) (see PARA 594) against the making of a risk of sexual harm order or an interim risk of sexual harm order (other than an order directing that an application be re-heard by a magistrates' court) is for these purposes to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court): s 127(3).

11 See PARA 594.

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594. Appeals against risk of sexual harm orders and interim orders.

A defendant may appeal to the Crown Court against the making of a risk of sexual harm order¹ or an interim risk of sexual harm order². On such an appeal the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just³.

- 1 Sexual Offences Act 2003 s 127(1)(a). As to applications for risk of sexual harm orders see PARA 591.
- 2 Sexual Offences Act 2003 s 127(1)(b). As to interim risk of sexual harm orders see PARA 593.
- 3 Sexual Offences Act 2003 s 127(2).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(xi) Risk of Sexual Harm Orders/595. Breach.

595. Breach.

A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a risk of sexual harm order¹ or an interim risk of sexual harm order². A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding five years³, or on summary conviction to imprisonment for a term not exceeding six months⁴ or to a fine not exceeding the statutory maximum⁵ or to both⁶.

If a defendant is a 'relevant offender' for the purposes of the notification requirements⁷ immediately before being convicted⁸ of an offence⁹ under these provisions¹⁰, or being found not guilty of such an offence by reason of insanity¹¹, or being found to be under a disability and to have done the act charged against him in respect of such an offence¹², or being cautioned in respect of such an offence¹³, and would otherwise¹⁴ cease to be subject to those requirements while the relevant order (as from time to time renewed)¹⁵ has effect¹⁶, he remains subject to them¹⁷. If the defendant is not such an offender immediately before the relevant conviction, finding or caution, he becomes subject to those requirements from the time of the conviction, finding or caution¹⁸ until the relevant order (as from time to time renewed) ceases to have effect¹⁹.

1 Sexual Offences Act 2003 s 128(1)(a). As to applications for risk of sexual harm orders see PARA 591. As to the effect of orders see PARA 592. In s 128(1) and, accordingly, in s 129(5) (see the text and notes 15) the references to a risk of sexual harm order and to an interim risk of sexual harm order include references, respectively to an order under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 s 2 (RSHOs in Scotland) and to an order under s 5 (interim RSHOs in Scotland), and for these purposes prohibitions imposed by an order made in one part of the United Kingdom apply (unless expressly confined to particular localities) throughout that and every other part of the United Kingdom: Sexual Offences Act 2003 s 128(1A) (ss 128(1A), 129(1A) added, s 129(1)(a) amended, by the Violent Crime Reduction Act 2006 s 56).

2 Sexual Offences Act 2003 s 128(1)(b). As to interim risk of sexual harm orders see PARA 593. See also note 1.

3 Sexual Offences Act 2003 s 128(2)(b). It is not open to the court by or before which a person is convicted of this offence to make an order of conditional discharge in respect of it: s 128(3).

4 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed.

5 As to the statutory maximum see PARA 140.

6 Sexual Offences Act 2003 s 128(2)(a).

7 As to the relevant offenders for the purposes of the notification requirements see PARAS 558-559.

8 As to the meaning of 'conviction' see PARA 363 note 2.

9 I.e. an offence under the Sexual Offences Act 2003 s 128 (see the text and notes 1-6) or the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 s 7 (contravention of RSHOs or interim RSHOs in Scotland): Sexual Offences Act 2003 s 129(1A) (as added: see note 1).

10 Sexual Offences Act 2003 s 129(1)(a), (2)(a) (s 129(1)(a) as amended: see note 1).

11 Sexual Offences Act 2003 s 129(1)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

12 Sexual Offences Act 2003 s 129(1)(c). As to references to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

13 Sexual Offences Act 2003 s 129(1)(d). As to cautions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 959.

14 le apart from the effect of this provision.

15 Where the relevant conviction, finding or caution is in respect of a breach of a risk of sexual harm order, the 'relevant order' is that order (Sexual Offences Act 2003 s 129(5)(a)); where the conviction, finding or caution is in respect of a breach of an interim risk of sexual harm order, the 'relevant order' is any risk of sexual harm order made on the hearing of the application to which the interim order relates or, if no such order is made, the interim risk order (s 129(5)(b)).

16 Sexual Offences Act 2003 s 129(2)(b).

17 Sexual Offences Act 2003 s 129(2).

18 Sexual Offences Act 2003 ss 129(3)(b), (4), 133(1).

19 Sexual Offences Act 2003 s 129(3)(a).

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596. Variation, renewal and discharge.

The defendant or the police may apply for the variation, renewal or discharge of a risk of sexual harm order¹. An application must be made to the appropriate court², which is the court which made the order³ or a magistrates' court for the area in which the defendant resides⁴, or, where the application is made by the police, any magistrates' court whose commission area includes any part of the relevant police area⁵. An application to a magistrates' court or youth court must be made by complaint⁶.

1 Sexual Offences Act 2003 s 125(1), (2). Although these provisions refer to a 'chief officer of police' in connection with the making of applications for variation, renewal or discharge, the powers described in the text are exercisable by the police generally: see PARA 591 note 1. Applications for variation, renewal or discharge may be made by the police for the area in which the defendant resides (s 125(2)(c)), or police who believe that the defendant is in, or is intending to come to, the area (s 125(2)(d)), or police who made the application for the order in question (s 125(2)(b)). As to risk of sexual harm orders see PARAS 591-595. As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq.

2 Sexual Offences Act 2003 s 125(1).

3 Sexual Offences Act 2003 s 125(7)(a). Any order made by the Crown Court on an appeal under s 127(1)(a) or (b) (see PARA 594) against the making of a risk of sexual harm order or an interim risk of sexual harm order (other than an order directing that an application be re-heard by a magistrates' court) is for these purposes to be treated as if it were an order of the court from which the appeal was brought (and not an order of the Crown Court): s 127(3).

4 Sexual Offences Act 2003 s 125(7)(b).

5 Sexual Offences Act 2003 s 125(7)(c).

6 Sexual Offences Act 2003 s 125(1). As to proceedings for complaint and the evidential burden in applications concerning preventive orders see PARA 534 note 2.

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597. Outcome of an application for variation, renewal or discharge.

On an application for the variation, renewal or discharge of a risk of sexual harm order¹ the court, after hearing the applicant and representations from any other person (if he wishes to be heard) who could have applied for a variation, renewal or discharge, may make such order varying, renewing or discharging the main order as it considers appropriate², subject to the following restrictions:

- 1965 (1) a renewal or variation order may impose additional prohibitions on the defendant only if it is necessary to do so for the purpose of protecting children generally or any child from harm from the defendant³; and any such order may only contain such prohibitions as are necessary for this purpose⁴;
- 1966 (2) the court must not discharge a risk of sexual harm order before the end of the fixed period of two years beginning with the day on which it was made, without the consent of the defendant⁵ and either the police⁶ (where the application for discharge is made by them)⁷ or the police for the area in which the defendant resides (in any other case)⁸.

1 As to such applications see PARA 596.

2 Sexual Offences Act 2003 s 125(3).

3 Sexual Offences Act 2003 s 125(4). As to the meaning of 'protecting children generally or any child from harm from the defendant' see PARA 591 note 13 (definition applied by s 125(6)).

4 Sexual Offences Act 2003 s 125(4).

5 Sexual Offences Act 2003 s 125(5).

6 The Sexual Offences Act 2003 s 125 refers to a 'chief officer of police' but the powers described in the text are exercisable by the police generally: see PARA 596 note 1.

7 Sexual Offences Act 2003 s 125(5)(a).

8 Sexual Offences Act 2003 s 125(5)(b).

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598. Appeals against order for variation, renewal or discharge.

A defendant may appeal against an order varying, renewing or discharging a risk of sexual harm order¹, or the refusal to make such an order². Appeals are made to the Crown Court³, and the court may make such orders as may be necessary to give effect to its determination of the appeal and such incidental or consequential order as may appear to it to be just⁴.

1 As to risk of sexual harm orders see PARAS 591-595. As to orders for the variation, renewal or discharge of these orders see PARAS 596-597.

2 Sexual Offences Act 2003 s 127(1)(c).

3 Sexual Offences Act 2003 s 127(1).

4 Sexual Offences Act 2003 s 127(2).

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(xii) Serious Crime Prevention Orders Made Otherwise than on Conviction

599. Power of High Court to make orders.

The High Court in England and Wales may make a serious crime prevention order¹ if it is satisfied that a person aged 18 or over² has been involved in serious crime (whether in England and Wales or elsewhere)³ and it has reasonable grounds to believe that the order would protect the public⁴ by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales⁵. Such an order may be made only on application⁶, and may contain such prohibitions, restrictions or requirements and such other terms as the court considers appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime⁷. Orders may be made against bodies corporate, partnerships and unincorporated associations as well as against individuals⁸. Provision is made in connection with the duration of orders⁹, and the variation and discharge of orders by the High Court¹⁰.

An appeal may be made to the Court of Appeal in relation to a decision of the High Court to make a serious crime prevention order¹¹. Failure to comply with a serious crime prevention order is an offence in respect of which a forfeiture order or (where applicable) a winding-up order may be made¹².

1 Serious Crime Act 2007 s 1(1), (5)(a). Proceedings before the High Court in relation to serious crime prevention orders are civil proceedings (s 35(1)), one consequence of which is that the standard of proof to be applied by the court in such proceedings is the civil standard of proof (s 35(2)). Serious crime prevention orders may also be made by the Crown Court on conviction under s 19: see PARA 350 et seq. As to the extent to which a person is bound by an order see ss 10, 30-32; and PARA 350 note 13. Corresponding provision is made in connection with the making of serious crime prevention orders by the High Court in Northern Ireland: see s 1(2).

The High Court must, on an application by a person, give the person an opportunity to make representations in proceedings before it about the making of a serious crime prevention order if it considers that the making of the order would be likely to have a significant adverse effect on that person: s 9(1).

2 An individual under the age of 18 may not be the subject of a serious crime prevention order: Serious Crime Act 2007 ss 1(4), 6. A person also may not be the subject of a serious crime prevention order if he falls within a description specified by order of the Secretary of State (s 7): at the date at which this volume states the law no such order had been made. As to the 'subject' of a serious crime prevention order see PARA 350 note 2.

3 Serious Crime Act 2007 s 1(1)(a). As to involvement by a person in serious crime (which for these purposes may be in England and Wales or (as the case may be) Northern Ireland) see PARA 352. For the purposes of s 1(1)(a) a person has been involved in serious crime elsewhere than in England and Wales if he has committed a serious offence in a country outside England and Wales (s 2(4)(a)), has facilitated the commission by another person of a serious offence in a country outside England and Wales (s 2(4)(b)) or has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in a country outside England and Wales (whether or not such an offence was committed) (s 2(4)(c)). For this purpose a 'serious offence in a country outside England and Wales' means an offence under the law of a country outside England and Wales which, at the time when the court is considering the application or matter in question, would be an offence under the law of England and Wales if committed in or as regards England and Wales (s 2(5)(a)) and either would be an offence which is specified, or falls within a description specified, in Sch 1 Pt 1 (see PARA 351) if committed in or as regards England and Wales (s 2(5)(b)(i)) or is conduct which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it meets the test in s 2(5)(b)(i) (s 2(5)(b)(ii)). An act punishable under the law of a

country outside the United Kingdom constitutes an offence under that law for the purposes of s 2(5), however it is described in that law: s 2(7). Corresponding provision is made in connection with the making of serious crime prevention orders by the High Court in Northern Ireland: see ss 2(6), 3(4)-(7).

4 As to the meaning of 'the public' see PARA 350 note 8.

5 Serious Crime Act 2007 s 1(1)(b). This requirement need not be satisfied if the order proposed to be made contains terms requiring the subject of the order to pay the costs of monitoring compliance with the order (ie under s 39(4), (5)): see s 39(6); and PARA 358 note 7.

6 A serious crime prevention order in England and Wales may be made only on an application by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office: Serious Crime Act 2007 s 8(a). As to the functions of the Directors see PARA 359.

7 See the Serious Crime Act 2007 ss 1(3), 5, 11-15, 34, 38; and PARA 353.

8 See the Serious Crime Act 2007 ss 10, 30-32; and PARA 350 notes 13-15. As to compliance with orders made against corporations, partnerships and associations see ss 39, 40; and PARA 358.

9 See the Serious Crime Act 2007 s 16; and PARA 354.

10 See the Serious Crime Act 2007 ss 17, 18; and PARA 355. The fact that a serious crime prevention order has been made or varied by the Crown Court does not prevent it from being varied or discharged by the High Court in accordance with Pt 1 (ss 1-43): s 22(2).

11 Serious Crime Act 2007 s 23(1)(a). The appeal may be brought by any person who was given an opportunity to make representations in the proceedings concerned by virtue of s 9(1) (see note 1): s 23(1). This provision is without prejudice to the rights of other persons to make appeals, by virtue of the Senior Courts Act 1981 s 16 (see **COURTS** vol 10 (Reissue) PARA 639) in relation to any judgments or orders of the High Court about serious crime prevention orders: Serious Crime Act 2007 s 23(2). As to the Senior Courts Act 1981 see PARA 36 note 18.

12 See the Serious Crime Act 2007 s 25 (offences), s 26 (powers of forfeiture in respect of offences) and ss 27, 29 (powers to wind up companies); and PARA 350 note 17.

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(xiii) Sexual Offences Prevention Orders Made Otherwise than on Conviction

600. Sexual offences prevention order made on police application.

The police¹ may by complaint to a magistrates' court apply² for a sexual offences prevention order³ in respect of a person residing in the relevant police area or a person who the police believe is in, or is intending to come to, the area if it appears to them that the person is a qualifying offender⁴ and has since the appropriate date⁵ acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made⁶.

A person is a 'qualifying offender' if⁷ he has or had been:

- 1967 (1) convicted of a listed offence⁸;
- 1968 (2) found not guilty of such an offence by reason of insanity⁹;
- 1969 (3) found to be under a disability and to have done the act charged against him in respect of such an offence¹⁰; or
- 1970 (4) cautioned in respect of such an offence¹¹,

or, if¹² under the law of a country¹³ outside the United Kingdom¹⁴:

- 1971 (a) he has or had been convicted of an act which constituted an offence, however described by the foreign law¹⁵, under the law in force of the country concerned¹⁶ and which would have constituted a listed offence if it had been done in any part of the United Kingdom¹⁷;
- 1972 (b) a court exercising jurisdiction under that law has made in respect of such an offence a finding equivalent to a finding of not guilty by reason of insanity¹⁸;
- 1973 (c) such a court has made in respect of such an offence a finding equivalent to a finding that he is under a disability and did the act charged against him in respect of the offence¹⁹; or
- 1974 (d) he has been cautioned in respect of such an offence²⁰.

On such application being made²¹, the court may make the order if it is satisfied that the offender is a qualifying offender²² and his behaviour since the appropriate date makes it necessary to make it, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant²³.

A sexual offences prevention order made on complaint has the same effect as an order made on conviction²⁴: provision is also made for the breach of such orders²⁵, for the variation, renewal and discharge of such orders²⁶ and for the making of interim orders²⁷. A defendant may appeal to the Crown Court against the making of a sexual offences prevention order²⁸.

1 Although these provisions refer to a 'chief officer of police' in connection with the making of a applications for a sexual offences prevention order, the powers described in the text are exercisable by the police generally (ie by another suitable person to whom the chief officer has delegated his responsibility) (see *R (on the application of the Chief Constable of West Midlands Police) v Birmingham Justices* [2002] EWHC 1087 (Admin), [2003] Crim LR 37, [2002] 28 LS Gaz R 32), and it is therefore broadly correct to refer to the application having

to be made by 'the police'. Determination of who is a suitable delegate is for the chief officer, and improper delegation is a matter for the courts: *R (Chief Constable of West Midlands Police) v Birmingham Justices*. This decision was made in relation to an application for an anti-social behaviour order (see PARA 304) but is equally applicable by its reasoning to an application for a sexual offences prevention order.

2 Applications made to any magistrates' court whose commission area includes any part of the applicant's police area (Sexual Offences Act 2003 s 104(6)(a)) or any place where it is alleged that the person acted in such a way as to give reasonable cause to believe that it is necessary for a sexual offences prevention order to be made (s 104(6)(b)). As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. As to proceedings for complaint and the evidential burden in applications for preventive orders see PARA 534 note 2.

3 As to the meaning of 'sexual offences prevention order' see PARA 360. Sexual offences prevention orders may also be made where a court is dealing with an offender: see PARA 360 et seq.

4 Sexual Offences Act 2003 s 104(5)(a). As to qualifying offenders see the text and notes 7-20.

5 The 'appropriate date', in relation to a qualifying offender, means the date (or first date) on which he was convicted, found or cautioned as mentioned in the Sexual Offences Act 2003 s 106(6) or (7) (see the text and notes 7-20): s 106(8). As to the meaning of 'conviction' see PARA 363 note 2.

6 Sexual Offences Act 2003 s 104(5)(b).

7 Whether before or after 1 May 2004 (the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874).

8 Sexual Offences Act 2003 s 106(5), (6)(a). A listed offence is an offence under Sch 3 (see PARA 560) or Sch 5 (see PARA 361). In construing any reference to an offence listed in Sch 3 any condition subject to which an offence is so listed that relates to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by s 132(9) (see PARA 561 note 4)) or to the age of any person is to be disregarded: s 106(13), (14) (added by the Criminal Justice and Immigration Act 2008 s 141).

9 Sexual Offences Act 2003 s 106(6)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31.

10 Sexual Offences Act 2003 s 106(6)(c). As to references to a person being or having been found to be under a disability and to have done the act charged against him in respect of an offence see PARA 360 note 5.

11 Sexual Offences Act 2003 s 106(6)(d). As to cautions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 959.

12 See note 7.

13 As to the meaning of 'country' see PARA 534 note 12.

14 As to the meaning of 'United Kingdom' see PARA 9 note 2.

15 Sexual Offences Act 2003 s 106(10).

16 Sexual Offences Act 2003 s 106(9)(a).

17 Sexual Offences Act 2003 s 106(7)(a), (9)(b). On an application for a sexual offences prevention order this condition is to be taken as met unless, not later than rules of court may provide, the defendant serves on the applicant a notice stating that, on the facts as alleged with respect to the act concerned, the condition is not in his opinion met (s 106(11)(a)), showing his grounds for that opinion (s 106(11)(b)), and requiring the applicant to prove that the condition is met (s 106(11)(c)), although the court may, if it thinks fit, permit the defendant to require the applicant to prove that the condition is met without service of such a notice (s 106(12)).

18 Sexual Offences Act 2003 s 106(7)(b).

19 Sexual Offences Act 2003 s 106(7)(c).

20 Sexual Offences Act 2003 s 106(7)(d).

21 Sexual Offences Act 2003 s 104(5)(b).

22 Sexual Offences Act 2003 s 104(4)(a).

23 Sexual Offences Act 2003 s 104(1)(a), (4)(b). As to the making of orders, and as to the meaning of 'protecting the public or any particular members of the public from serious sexual harm from the defendant', see PARA 360 note 7.

24 See PARA 362.

25 See PARA 364.

26 See PARAS 365-366.

27 See PARA 601.

28 See PARA 363.

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601. Interim sexual offences prevention orders.

Where an application for a sexual offences prevention order¹ has not been determined², an application for an interim sexual offences prevention order may be made either in the complaint containing the main application³ or, if the main application has been made, by complaint to the court to which that application has been made by the person who made it⁴. The court may make an interim order if it considers it just to do so⁵. An interim order prohibits the defendant from doing anything described in it⁶. The duration of an interim order is a fixed period specified in the order⁷, and it ceases to have effect, if it has not already done so, on the determination of the main application⁸. The applicant or the defendant may by complaint apply to the court which made the interim order for it to be varied, renewed or discharged⁹. A court which makes an interim order in respect of a young offender (that is, a person aged under 18) may make a parental direction¹⁰. A defendant may appeal to the Crown Court against the making of an interim order¹¹.

Where an interim order is made in respect of a defendant who was subject to the notification requirements¹² immediately before the making of the order¹³ and who would otherwise cease to be subject to those requirements while the order has effect¹⁴, the defendant remains subject to those requirements¹⁵. Where an order is made in respect of a defendant who was not a relevant offender immediately before the making of the order, the order subjects the defendant to the notification requirements from the making of the order until it ceases to have effect¹⁶.

1 As to applications for sexual offences prevention orders see PARA 600. As to the meaning of 'sexual offences prevention order' see PARA 360.

Sexual offences prevention orders may also be made where a court is dealing with an offender: see PARA 360 et seq.

2 Sexual Offences Act 2003 s 109(1).

3 Sexual Offences Act 2003 ss 109(2)(a), 133(1).

4 Sexual Offences Act 2003 s 109(2)(b).

5 Sexual Offences Act 2003 s 109(3). As to the making of an interim sexual offences prevention order see CrimPR 50.1.

6 Sexual Offences Act 2003 s 109(3). A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by an interim sexual offences prevention order: see PARA 603.

7 Sexual Offences Act 2003 s 109(4)(a).

8 Sexual Offences Act 2003 s 109(4)(b).

9 Sexual Offences Act 2003 s 109(6).

Applications may also be made for the variation, renewal or discharge of interim sex offender orders made under the Crime and Disorder Act 1998 s 2A (repealed) before 1 May 2004 (ie the date on which the Sexual Offences Act 2003 Pt 2 (ss 80-136) was brought into force by the Sexual Offences Act 2003 (Commencement) Order 2004, SI 2004/874): Sexual Offences Act 2003 s 109(7)(a).

10 See the Sexual Offences Act 2003 s 89(1); and PARA 569.

11 See PARA 602.

12 As to the circumstances in which the notification requirements arise in respect of an offender see PARAS 558, 559. Such an offender is known as a 'relevant offender': see PARAS 557-559.

13 Sexual Offences Act 2003 ss 107(3)(a), 109(5).

14 Sexual Offences Act 2003 s 107(3)(b).

15 Sexual Offences Act 2003 s 107(3).

16 Sexual Offences Act 2003 s 107(4)(a).

Pt 2 applies to the defendant subject to the modification that the 'relevant date' is the date of service of the order: ss 107(4)(b), (5), 133(1).

UPDATE

601 Interim sexual offences prevention orders

NOTE 5--CrimPR Pt 50 now Criminal Procedure Rules 2010, SI 2010/60, Pt 50. Provision as to the making of an interim sexual offences prevention order is not reproduced.

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602. Appeals against sexual offences prevention orders and interim orders made on police application.

Where a sexual offences prevention order¹ is made on application² the defendant may appeal to the Crown Court against the making of the order³; a defendant may also appeal to the Crown Court against the making of an interim order⁴. There is no right to appeal against a refusal to make an order or against its terms. Where an appeal⁵ is made, the court may make such orders necessary to give effect to its determination of the appeal and may also make such incidental or consequential orders as appear to it to be just⁶.

1 As to the meaning of 'sexual offences prevention order' see PARA 360.

2 I.e. under the Sexual Offences Act 2003 s 104(5): see PARA 600. As to applications for sexual offences prevention orders see PARA 600. Sexual offences prevention orders may also be made where a court is dealing with an offender: see PARA 360 et seq.

3 Sexual Offences Act 2003 s 110(1)(c).

4 Sexual Offences Act 2003 s 110(2).

5 I.e. an appeal under the Sexual Offences Act 2003 s 110(1)(c), (2).

6 Sexual Offences Act 2003 s 110(4). An order made by the Crown Court on an appeal against the making of a sexual offences prevention order or an interim sexual offences prevention order (other than an order that an application be re-heard by a magistrates' court) is treated as if it were an order of the court appealed from (and not an order of the Crown Court): s 110(5).

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603. Breach.

A person commits an offence if, without reasonable excuse, he does anything which he is prohibited from doing by a sexual offences prevention order¹ or an interim sexual offences prevention order². A person guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding five years³, or on summary conviction to imprisonment for a term not exceeding six months⁴ or to a fine not exceeding the statutory maximum⁵ or to both⁶.

1 Sexual Offences Act 2003 s 113(1)(a). As to the meaning of 'sexual offences prevention order' see PARA 360. As to applications for sexual offences prevention orders see PARA 600. Sexual offences prevention orders may also be made where a court is dealing with an offender: see PARA 360 et seq.

2 Sexual Offences Act 2003 s 113(1)(b). As to interim sexual offences prevention orders see PARA 601.

3 Sexual Offences Act 2003 s 113(2)(b). It is not open to the court by or before which a person is convicted of one of these offences to make an order of conditional discharge in respect of it: s 113(3).

4 As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 12 months (see the Criminal Justice Act 2003 ss 281(7), 282(2), (3) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121), although this does not affect the penalty for any offence committed before that day (see s 282(4) (not yet in force); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1121). At the date at which this volume states the law no such day had been appointed.

5 As to the statutory maximum see PARA 140.

6 Sexual Offences Act 2003 s 113(2)(a).

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(xiv) Violent Offender Orders

A. FORM AND PURPOSE OF ORDERS

604. Violent offender orders.

A violent offender order is an order which contains such prohibitions, restrictions or conditions¹ as the court making the order considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender². Such prohibitions, restrictions or conditions may prevent the offender:

- 1975 (1) from going to any specified³ premises or any other specified place (whether at all, or at or between any specified time or times)⁴;
- 1976 (2) from attending any specified event⁵; and
- 1977 (3) from having any, or any specified description of, contact with any specified individual⁶.

A violent offender order (and, where applicable, an interim violent offender order⁷) may not be made so as to come into force when the person who is the subject of the order is in custody⁸ or on licence⁹ or is otherwise detained¹⁰: subject to this a violent offender order has effect, unless renewed or discharged¹¹, for such period of not less than two, nor more than five, years as is specified in the order¹².

Failure without reasonable excuse to comply with any prohibition, restriction or condition contained in a violent offender order or an interim violent offender order is an offence¹³.

1 le as authorised by the Criminal Justice and Immigration Act 2008 s 102: see the text and notes 3-6. Any of the prohibitions, restrictions or conditions contained in a violent offender order may relate to conduct in Scotland or Northern Ireland (as well as to conduct in England or Wales): s 102(2).

2 Criminal Justice and Immigration Act 2008 s 98(1)(a). For the purposes of Pt 7 (ss 98-117) any reference to protecting the public from the risk of serious violent harm caused by a person is a reference to protecting the public in the United Kingdom, or any particular members of the public in the United Kingdom, from a current risk of serious physical or psychological harm caused by that person committing one or more specified offences: ss 98(2), 117(2). As to the specified offences for these purposes see the text and notes 3-8; as to the qualifying offenders see PARA 606. 'Offender', in relation to a violent offender order or an interim violent offender order, means the person in respect of whom the order is made: s 117(1).

3 'Specified' means specified in the violent offender order concerned: Criminal Justice and Immigration Act 2008 s 102(4).

4 Criminal Justice and Immigration Act 2008 s 102(1)(a). The Secretary of State may by order amend s 102(1) (s 102(3)): at the date at which this volume states the law no such order had been made.

5 Criminal Justice and Immigration Act 2008 s 102(1)(b).

6 Criminal Justice and Immigration Act 2008 s 102(1)(c).

7 As to interim violent offender orders see PARA 608.

8 le subject to a custodial sentence imposed in respect of any offence: Criminal Justice and Immigration Act 2008 ss 101(5)(a), 104(5)(a). 'Custodial sentence' means a sentence of imprisonment, any other sentence or order mentioned in the Powers of Criminal Courts (Sentencing) Act 2000 s 76(1) (see PARA 20 note 2) or any corresponding sentence or order imposed or made under any earlier enactment (Criminal Justice and Immigration Act 2008 s 117(1)), or a relevant service sentence, that is to say: a sentence of imprisonment passed under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957; a sentence of custody for life, or detention, under the Army Act 1955 s 71A, the Air Force Act 1955 s 71A or the Naval Discipline Act 1957 s 43A (see **ARMED FORCES** vol 2(2) (Reissue) PARA 431); a sentence under a custodial order within the meaning of the Army Act 1955 s 71AA or Sch 5A para 10(1), the Air Force Act 1955 s 71AA or Sch 5A para 10(1), or the Naval Discipline Act 1957 s 43AA or Sch 4A para 10(1) (see **ARMED FORCES** vol 2(2) (Reissue) PARAS 431-432); or a custodial sentence within the meaning of the Armed Forces Act 2006 (see s 374; and **ARMED FORCES**): Criminal Justice and Immigration Act 2008 s 117(2).

9 le on licence for part of the term of a custodial sentence imposed in respect of any offence: Criminal Justice and Immigration Act 2008 ss 101(5)(b), 104(5)(b).

10 le subject to a hospital order or a supervision order made in respect of any offence: Criminal Justice and Immigration Act 2008 ss 101(5)(c), 104(5)(c). 'Hospital order' means an order under the Mental Health Act 1983 s 37 (see PARA 332; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491) or the Mental Health Act 1959 s 60 (repealed) or any other order providing for the admission of a person to hospital following a finding of the kind mentioned in the Criminal Justice and Immigration Act 2008 s 99(2)(b) or (c) (see PARA 606): s 117(1). 'Supervision order' means a supervision order within the meaning of the Criminal Procedure (Insanity) Act 1964 Sch 1A (see PARA 368 et seq) or a supervision and treatment order within the meaning of Sch 2 (repealed): Criminal Justice and Immigration Act 2008 s 117(1).

11 le under the Criminal Justice and Immigration Act 2008 s 103: see PARA 609.

12 Criminal Justice and Immigration Act 2008 s 98(1)(b).

13 Criminal Justice and Immigration Act 2008 s 113(1)(a), (b). A person guilty of an offence under s 113 is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both, or on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine or both: s 113(6), (7)(a). Proceedings for an offence under s 113 may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found: s 113(8).

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605. Offences in respect of which violent offender orders may be made.

A violent offender order¹ may be made in respect of a person who has been convicted² of any of the following offences:

- 1978 (1) manslaughter³;
- 1979 (2) soliciting murder⁴;
- 1980 (3) wounding with intent to cause grievous bodily harm⁵;
- 1981 (4) malicious wounding⁶;
- 1982 (5) attempting to commit murder or conspiracy to commit murder⁷; or
- 1983 (6) a corresponding service offence⁸,

where the court considers that the prohibitions, restrictions and conditions contained in the order are necessary for the purpose of protecting the public⁹ from serious harm¹⁰ caused by that person committing one or more of those offences¹¹.

Such offences are referred to as 'specified offences'¹².

¹ See PARA 604.

² Or found not guilty or under a disability in relation to the offence: see the Criminal Justice and Immigration Act 2008 s 99(2); and PARA 606. As to references to a person being or having been found to be under a disability and to have done the act charged against him see the Sexual Offences Act 2003 s 135(3); and PARA 360 note 5 (definition applied by the Criminal Justice and Immigration Act 2008 s 117(6)).

³ Criminal Justice and Immigration Act 2008 s 98(3)(a). As to the offence of manslaughter see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 92 et seq.

⁴ Criminal Justice and Immigration Act 2008 s 98(3)(b). As to the offence of soliciting murder (ie an offence under the Offences Against the Person Act 1861 s 4) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 104.

⁵ Criminal Justice and Immigration Act 2008 s 98(3)(c). As to the offence of wounding with intent to cause grievous bodily harm (ie an offence under the Offences Against the Person Act 1861 s 18) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118.

⁶ Criminal Justice and Immigration Act 2008 s 98(3)(d). As to the offence of malicious wounding (ie an offence under the Offences Against the Person Act 1861 s 20) see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120.

⁷ Criminal Justice and Immigration Act 2008 s 98(3)(e). As to inchoate offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 65 et seq.

⁸ Criminal Justice and Immigration Act 2008 s 98(3)(f). For this purpose a corresponding service offence is an offence against the Army Act 1955 s 70, the Air Force Act 1955 s 70 or the Naval Discipline Act 1957 s 42 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 422) of which the corresponding civil offence (within the meaning of those Acts: see **ARMED FORCES** vol 2(2) (Reissue) PARA 422) is an offence listed in any of heads (1)-(5) in the text (Criminal Justice and Immigration Act 2008 s 98(4)(a)), and an offence under the Armed Forces Act 2006 s 42 (see **ARMED FORCES**) as respects which the corresponding offence under the law of England and Wales (within the meaning given by s 42) is an offence listed in any of heads (1)-(5) in the text (Criminal Justice and Immigration Act 2008 s 98(4)(b)). The Armed Forces Act 2006 s 48 (attempts, conspiracy, encouragement and assistance and aiding and abetting outside England and Wales: see **ARMED FORCES**) applies with modifications for the purposes of the Criminal Justice and Immigration Act 2008 s 99(4)(b): s 98(5).

9 le the public in the United Kingdom, or any particular members of the public in the United Kingdom: see PARA 604 note 2.

10 le a current risk of serious physical or psychological harm: see PARA 604 note 2.

11 Criminal Justice and Immigration Act 2008 s 98(2).

12 Criminal Justice and Immigration Act 2008 s 98(3).

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606. Persons in respect of whom violent offender orders may be made.

A violent offender order¹ may be made in respect of a person aged 18 or over who has been² convicted of a specified offence³, found not guilty of a specified offence by reason of insanity⁴ or found to be under a disability and to have done the act charged in respect of a specified offence⁵. Where the person has been convicted, it is further required that either a custodial sentence⁶ of at least 12 months was imposed for the offence⁷ or that a hospital order⁸ (with or without a restriction order⁹) was made in respect of it¹⁰, and where the person has been found not guilty by reason of insanity or has been found to be under a disability it is further required that a hospital order (with or without a restriction order)¹¹ or a supervision order¹² was made in respect of the offence¹³.

A violent offender order may also be made in respect of a person if¹⁴, under the law in force in a country¹⁵ outside England and Wales, he has been convicted of a relevant offence¹⁶ or a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that he was not guilty by reason of insanity¹⁷ or a finding equivalent to a finding that he was under a disability and did the act charged in respect of the offence¹⁸. Where the person has been convicted, it is further required that either a sentence of imprisonment or other detention for at least 12 months was imposed for the offence¹⁹ or an order equivalent to a hospital order was made in respect of it²⁰, and where a finding equivalent to a finding that the person has been found not guilty by reason of insanity or has been found to be under a disability has been made, it is further required that an order equivalent to a hospital order (with or without a restriction order) or a supervision order was made in respect of the offence²¹.

1 See PARA 604.

2 Ie whether before or after 3 August 2009 (ie the date on which the Criminal Justice and Immigration Act 2008 Pt 7 (ss 98-117) was brought into force by the Criminal Justice and Immigration Act 2008 (Commencement No 10) Order 2009, SI 2009/1842).

3 Criminal Justice and Immigration Act 2008 s 99(1), (2)(a). As to the specified offences for these purposes see PARA 605.

4 Criminal Justice and Immigration Act 2008 s 99(2)(b). As to verdicts of not guilty by reason of insanity see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 31. As to references to a person being or having been found to be under a disability and to have done the act charged against him see PARA 605 note 2. References in Pt 7 to a finding of the kind mentioned in s 99(2)(b) or (c) or (4)(b) or (c) include references to a case where a decision on appeal is to the effect that there should have been such a finding in the proceedings concerned: s 117(4).

5 Criminal Justice and Immigration Act 2008 s 99(2)(c). See note 4.

6 As to the meaning of 'custodial sentence' see PARA 604 note 8.

7 Criminal Justice and Immigration Act 2008 s 99(2)(a)(i).

8 As to the meaning of 'hospital order' see PARA 604 note 10.

9 'Restriction order' means an order under the Mental Health Act 1983 s 41 (see PARA 337) or the Mental Health Act 1959 s 65 (repealed): Criminal Justice and Immigration Act 2008 s 117(1).

10 Criminal Justice and Immigration Act 2008 s 99(2)(a)(ii).

- 11 Criminal Justice and Immigration Act 2008 s 99(3)(a).
- 12 Criminal Justice and Immigration Act 2008 s 99(3)(b). As to the meaning of 'supervision order' see PARA 604 note 10.
- 13 Criminal Justice and Immigration Act 2008 s 99(3).
- 14 See note 2.
- 15 'Country' includes territory: Criminal Justice and Immigration Act 2008 s 117(1).
- 16 Criminal Justice and Immigration Act 2008 s 99(4)(a). For this purpose a 'relevant offence' is an act which constituted an offence under the law in force in the country concerned (s 99(5)(a)) and would have constituted a specified offence (see PARA 605) if it had been done in England and Wales (s 99(5)(b)). An act punishable under the law in force in a country outside England and Wales constitutes an offence under that law for the purposes of s 99(5) however it is described in that law: s 99(6). On an application for a violent offender order (ie under s 100: see PARA 607) the condition in s 99(5)(b) (where relevant) is to be taken as met in relation to the person to whom the application relates (P) unless, not later than three days before the hearing date for the application under s 100, P serves on the applicant a notice denying that, on the facts as alleged with respect to the act in question, the condition is met (s 99(7)(a); Magistrates' Courts (Violent Offender Orders) Rules 2009, SI 2009/2197, r 4), giving the reasons for denying that it is met (Criminal Justice and Immigration Act 2008 s 99(7)(b)) and requiring the applicant to prove that it is met (s 99(7)(c)). If the court thinks fit, it may permit P to require the applicant to prove that the condition is met even though no notice has been served under s 99(7): s 99(8).
- 17 Criminal Justice and Immigration Act 2008 s 99(4)(b).
- 18 Criminal Justice and Immigration Act 2008 s 99(4)(c).
- 19 Criminal Justice and Immigration Act 2008 s 99(4)(a)(i).
- 20 Criminal Justice and Immigration Act 2008 s 99(3)(a), (4)(a)(ii).
- 21 Criminal Justice and Immigration Act 2008 s 99(3)(b), (c).

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607. Applications for, and making of, violent offender orders.

Violent offender orders¹ may only be made on application by complaint to a magistrates' court² by a chief officer of police³ where it appears to that officer that the person is a qualifying offender⁴ who has, since the appropriate date⁵, acted in such a way as to give reasonable cause to believe that it is necessary for a violent offender order to be made in respect of him⁶. The Secretary of State may by order make provision for applications for violent offender orders⁷ to be made by such additional persons or bodies as are specified or described in the order⁸, but at the date at which this volume states the law no such order had been made.

Where an application for a violent offender order is made⁹ in respect of a person the court may make the order if, after hearing the applicant¹⁰ and, if he wishes to be heard, the person in respect of whom the application is made¹¹, the court is satisfied that the person is a qualifying offender¹² and has, since the appropriate date, acted in such a way as to make it necessary to make a violent offender order for the purpose of protecting the public from the risk of serious violent harm caused by him¹³.

An order cannot be made so as to come into force at any time when the person to whom the order applies is in custody, on licence or otherwise detained¹⁴, but an order may be applied for, and made, at such a time¹⁵. A person in respect of whom a violent offender order has been made may appeal to the Crown Court against the making of the order¹⁶.

1 See PARA 604.

2 Criminal Justice and Immigration Act 2008 s 100(1). An application may be made to any magistrates' court whose commission area includes any part of the applicant's police area or any place where it is alleged that the person acted in such a way as is mentioned in s 100(2)(b) (see the text and note 6): s 100(3). As to the form of applications see the Magistrates' Courts (Violent Offender Orders) Rules 2009, SI 2009/2197, r 2(1)(a), Sch 1.

3 Criminal Justice and Immigration Act 2008 s 100(1). An application may only be made if the person resides in the chief officer's police area (s 100(1)(a)) or the chief officer believes that the person is in, or is intending to come to, that area (s 100(1)(b)).

4 Criminal Justice and Immigration Act 2008 s 100(2)(a). As to qualifying offenders see PARA 606.

5 Ie the date (or, as the case may be, the first date) on which the person became a person within any of the Criminal Justice and Immigration Act 2008 s 99(2) or (4) (see PARA 606), whether that date fell before or after 3 August 2009 (ie the date on which Pt 7 (ss 98-117) was brought into force by the Criminal Justice and Immigration Act 2008 (Commencement No 10) Order 2009, SI 2009/1842): Criminal Justice and Immigration Act 2008 s 100(5).

6 Criminal Justice and Immigration Act 2008 s 100(2)(b).

7 Ie applications under the Criminal Justice and Immigration Act 2008 s 100.

8 Criminal Justice and Immigration Act 2008 s 100(4)(a). Such an order may also make provision specifying cases or circumstances in which applications may be so made (s 100(4)(b)) and for provisions of Pt 7 to apply, in relation to the making of applications (or cases where applications are made) by any such persons or bodies, with such modifications as are specified in relation to them in the order (s 100(4)(c)).

9 Ie an application under the Criminal Justice and Immigration Act 2008 s 100. A magistrates' court may not begin hearing an application under s 100 for a violent offender order, an application under s 104 for an interim violent offender order (see PARA 608) or an application under s 103 for the variation, discharge or renewal of a violent offender order, or for the variation or discharge of an interim violent offender order (see PARA 609),

unless it is satisfied that the relevant person (ie the person to whom the application under s 100 or s 104 relates or, as the case may be, the person in respect of whom the order proposed to be varied, discharged or renewed under s 103 has been made) has been given notice of the application and the time and place of the hearing a reasonable time before the hearing: s 105.

10 Criminal Justice and Immigration Act 2008 s 101(1), (2)(a).

11 Criminal Justice and Immigration Act 2008 s 101(2)(b).

12 Criminal Justice and Immigration Act 2008 s 101(3)(a).

13 Criminal Justice and Immigration Act 2008 s 101(3)(b). As to the form of orders see the Magistrates' Courts (Violent Offender Orders) Rules 2009, SI 2009/2197, r 2(2), Sch 2. As to references to protecting the public from the risk of serious violent harm caused by a person see PARA 604 note 2. When deciding whether it is necessary to make an order for the purpose of protecting the public from the risk of serious violent harm caused by a person, the court must have regard to whether that person would, at any time when such an order would be in force, be subject under any other enactment to any measures that would operate to protect the public from the risk of such harm: Criminal Justice and Immigration Act 2008 s 101(4).

14 See the Criminal Justice and Immigration Act 2008 s 101(5); and PARA 604.

15 Criminal Justice and Immigration Act 2008 s 101(6).

16 Criminal Justice and Immigration Act 2008 s 106(1)(a). On an appeal under s 106 the Crown Court may make such orders as may be necessary to give effect to its determination of the appeal (s 106(3)(a)) and may also make such incidental or consequential orders as appear to it to be just (s 106(3)(b)).

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608. Interim violent offender orders.

Where an application for a violent offender order¹ (the 'main application') has not yet been determined an application² for an interim violent offender order may be made by the complaint by which the main application is made³ or, if the main application has already been made to a court, by means of a further complaint made to that court by the person making the main application⁴, and the court may make the interim order if it appears to the court:

- 1984 (1) that the person to whom the main application relates is a qualifying offender⁵;
- 1985 (2) that, if the court were determining that application, it would be likely to make a violent offender order in respect of that person⁶; and
- 1986 (3) that it is desirable to act before that application is determined, with a view to securing the immediate protection of the public from the risk of serious violent harm caused by that person⁷.

An interim violent offender order may contain such prohibitions, restrictions or conditions⁸ as the court considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by the person in question⁹. It has effect only for such period as is specified in the order¹⁰ and ceases to have effect (if it has not already done so) at the appropriate time¹¹. An interim violent offender order cannot be made so as to come into force at any time when the person to whom the order applies is in custody, on licence or otherwise detained¹². A person in respect of whom an interim violent offender order has been made may appeal to the Crown Court against the making of the order¹³. Provision is also made for the variation and discharge of an interim violent offender order¹⁴. Failure without reasonable excuse to comply with any prohibition, restriction or condition contained in an interim violent offender order is an offence¹⁵.

1 Ie under the Criminal Justice and Immigration Act 2008 s 100 (see PARA 607).

2 Ie under the Criminal Justice and Immigration Act 2008 s 104 (see the text and notes 3-11). The court may not begin hearing such an application without notice having been given: see s 105; and PARA 607 note 9.

3 Criminal Justice and Immigration Act 2008 s 104(1), (2)(a). As to the form of applications and interim orders see the Magistrates' Courts (Violent Offender Orders) Rules 2009, SI 2009/2197, r 2(1)(b), (3), Schs 1, 3.

4 Criminal Justice and Immigration Act 2008 s 104(2)(b).

5 Criminal Justice and Immigration Act 2008 s 104(3)(a). As to qualifying offenders see PARA 606.

6 Criminal Justice and Immigration Act 2008 s 104(3)(b).

7 Criminal Justice and Immigration Act 2008 s 104(3)(c) As to references to protecting the public from the risk of serious violent harm caused by a person see PARA 604 note 2.

8 This reference to prohibitions, restrictions or conditions is to prohibitions, restrictions or conditions authorised by the Criminal Justice and Immigration Act 2008 s 102 (see PARA 604): s 104(4).

9 Criminal Justice and Immigration Act 2008 s 104(3).

10 Criminal Justice and Immigration Act 2008 s 104(6)(a).

11 Criminal Justice and Immigration Act 2008 s 104(6)(b). The 'appropriate time' is either the time when a violent offender order made in pursuance of the main application comes into force (if the court grants the main application) or the time when the court decides not to grant the main application or it is withdrawn (if applicable): s 104(7).

12 See the Criminal Justice and Immigration Act 2008 s 104(5); and PARA 604.

13 Criminal Justice and Immigration Act 2008 s 106(1)(b). As to the powers of the Crown Court on an appeal under s 106 see PARA 607 note 16.

14 See PARA 609.

15 Criminal Justice and Immigration Act 2008 s 113(1)(b). As to the punishment of, and proceedings for, an offence under s 113 see PARA 604 note 13.

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609. Variation, renewal and discharge of violent offender orders and interim violent offender orders.

The offender¹ and the chief officer of police² may by complaint apply to the appropriate magistrates' court³ for an order varying or discharging a violent offender order⁴ or an interim violent offender order⁵ or for an order (a 'renewal order') renewing a violent offender order for such period of not more than five years as is specified in the renewal order⁶. On such an application the court may, after hearing the applicant⁷ and any other persons entitled to make such an application⁸ who wish to be heard⁹, make such order varying, renewing or discharging the violent offender order or the interim order as the court considers appropriate¹⁰; however:

- 1987 (1) a violent offender order or an interim order may only be renewed, or varied so as to impose additional prohibitions, restrictions or conditions on the offender¹¹, if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by the offender¹²; and
- 1988 (2) the court may not discharge a violent offender order before the end of the period of two years beginning with the date on which it comes into force¹³ unless consent to its discharge is given by the offender and the chief officer of police¹⁴.

A person in respect of whom a violent offender order or an interim violent offender order has been made may appeal to the Crown Court against the making of an order for variation, renewal or discharge and against any refusal to make such an order¹⁵.

1 Criminal Justice and Immigration Act 2008 ss 103(2)(a). As to the meaning of 'offender' see PARA 604 note 2.

2 I.e. the chief officer of police who applied for the order (Criminal Justice and Immigration Act 2008 s 103(2)(b)), (if different) the chief officer of police for the area in which the offender resides (s 103(2)(c)) or (if different) a chief officer of police who believes that the offender is in, or is intending to come to, his police areas (s 103(2)(d)).

3 I.e. the magistrates' court that made the violent offender order (see PARA 607) or (if different) a magistrates' court for the area in which the offender resides (Criminal Justice and Immigration Act 2008 s 103(3)(a)) or, where the application for variation, renewal or discharge is made by a chief officer of police, any magistrates' court whose commission area includes any part of the chief officer's police area (s 103(3)(b)). For the purposes of s 103(3) an order made by the Crown Court on an appeal made by virtue of s 106(1) or (2) (see PARAS 607, 608; and the text and note 15) is to be treated as if made by the court from which the appeal was brought: s 106(4). An application must be made in writing and must specify the reason why the applicant believes the court should vary, discharge or renew the order, as the case may be: Magistrates' Courts (Violent Offender Orders) Rules 2009, SI 2009/2197, r 3. The court may not begin hearing such an application without notice having been given: see the Criminal Justice and Immigration Act 2008 s 105; and PARA 607 note 9.

4 Criminal Justice and Immigration Act 2008 s 103(1)(a). As to violent offender orders see PARA 604.

5 Criminal Justice and Immigration Act 2008 s 104(8). As to interim violent offender orders see PARA 608.

6 Criminal Justice and Immigration Act 2008 s 103(1)(b).

7 Criminal Justice and Immigration Act 2008 s 103(4)(a).

8 I.e. the persons mentioned in the Criminal Justice and Immigration Act 2008 s 103(2) (see the text and notes 1-2).

9 Criminal Justice and Immigration Act 2008 s 103(4)(b).

10 Criminal Justice and Immigration Act 2008 s 103(4).

11 This reference to prohibitions, restrictions or conditions is to prohibitions, restrictions or conditions authorised by the Criminal Justice and Immigration Act 2008 s 102 (see PARA 604): s 103(6).

12 Criminal Justice and Immigration Act 2008 s 103(5). As to references to protecting the public from the risk of serious violent harm caused by a person see PARA 604 note 2. Any renewed or varied order may contain only such prohibitions, restrictions or conditions as the court considers necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender: s 103(5).

13 Ie under the Criminal Justice and Immigration Act 2008 s 101 (see PARA 607).

14 Criminal Justice and Immigration Act 2008 s 103(7). Where the application under s 103 is made by a chief officer of police, consent must be given by that chief officer; and where the application is made by the offender, consent must be given by the chief officer of police for the area in which the offender resides: s 103(7). Section 103(7) does not apply to interim orders: s 104(8).

15 Criminal Justice and Immigration Act 2008 s 106(2). As to the powers of the Crown Court on an appeal under s 106 see PARA 607 note 16.

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B. NOTIFICATION REQUIREMENTS

610. Initial notification and annual renotification under the notification requirements.

An offender¹ subject to notification requirements² must³ notify to the police⁴:

- 1989 (1) date of birth⁵;
- 1990 (2) national insurance number⁶;
- 1991 (3) name on the relevant date or, if the offender used two or more names on that date, each of those names⁷;
- 1992 (4) home address on the relevant date⁸;
- 1993 (5) name on the date on which the notification is given or, if the offender used two or more names on that date, each of those names⁹;
- 1994 (6) home address on the date on which the notification is given¹⁰;
- 1995 (7) the address of any other premises in the United Kingdom at which on that date the offender regularly resides or stays¹¹; and
- 1996 (8) any other information prescribed by regulations made by the Secretary of State¹².

This information must, subject to any intervening statutory notifications, be re-notified to the police annually¹³ unless the offender is in custody, imprisoned or detained¹⁴ or outside the United Kingdom¹⁵, in which event he must notify the police of this information within three days of his ceasing to be in custody, imprisoned, detained or outside the United Kingdom¹⁶. Provision is made for the verification of information notified under these provisions¹⁷.

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with the notification requirements¹⁸ is an offence¹⁹.

1 As to the meaning of 'offender' see PARA 604 note 2.

2 References in the Criminal Justice and Immigration Act 2008 Pt 7 (ss 98-117) to an offender subject to notification requirements are references to an offender who is for the time being subject to a violent offender order (see PARA 604) or an interim violent offender order (see PARA 608) which is in force under Pt 7: s 107(1) (having effect subject to s 110(7), which excludes from s 110 an offender subject to an interim violent offender order: s 107(2)).

3 Ie within the period of three days beginning with the date on which the violent offender order or the interim violent offender order comes into force in relation to the offender (the 'relevant date'): s 108(1). When determining the period of three days mentioned in s 108(1) or s 109(1) (see PARA 611) or the period of six days for the purposes of s 109(6) (see PARA 611) there is to be disregarded any time when the offender is remanded in or committed to custody by an order of a court or kept in service custody (ss 108(4)(a)), 109(7)) serving a sentence of imprisonment or a term of service detention (s 108(4)(b)), detained in a hospital (s 108(4)(c)) or outside the United Kingdom (s 108(4)(d)). 'Kept in service custody' means kept in service custody by virtue of an order under the Armed Forces Act 2006 s 105(2) (see **ARMED FORCES**): Criminal Justice and Immigration Act 2008 s 117(1). As to the meanings of 'imprisonment' and 'detained in a hospital' see the Sexual Offences Act 2003 ss 131, 133; and PARA 559 note 6 (definitions applied by the Criminal Justice and Immigration Act 2008 s 117(6)). As to the meaning of 'service detention' see the Armed Forces Act 2006 s 374; and **ARMED FORCES** (definition applied by the Criminal Justice and Immigration Act 2008 s 117(1)).

4 Notification under the Criminal Justice and Immigration Act 2008 s 108(1) (see the text and note 3), s 109(1) (notification of change: see PARA 611) or s 110(1) (periodic re-notification: see the text and note 13) must be made by the offender attending at a police station in his local police area (s 112(1)(a)) and making an oral notification to a police officer or to a person authorised for the purpose by the officer in charge of the station (s 112(1)(b)). The notification must be acknowledged in writing (s 112(3)(a)) and in such form as the Secretary of State may direct (s 112(3)(b)). The offender must, for the purpose of verifying his identity and if requested to do so by the police officer or person to whom the notification is made, allow the officer or person to take his fingerprints (s 112(4)(a)), photograph (which includes any process by means of which an image may be produced) any part of him (ss 112(5)(b), (5)) or do both these things (s 112(4)(c)). Failure without reasonable excuse to comply with s 112(4) is an offence: s 113(2)(a). As to the punishment of violations of s 112(4) (ie an offence under s 113) see PARA 604 note 13.

For the purposes of s 112 a person's 'local police area' means (by virtue of s 112(5)):

935 (1) the police area in which the offender's home address is situated;

936 (2) in the absence of a home address in England and Wales, the police area in which the home address last notified is situated (s 51(1)(b)); or

937 (3) in the absence of a home address and of any such notification, the police area in which the court that made the order or the interim order (as the case may be) was situated.

In Pt 7 'home address' means, in relation to the offender, the address of his sole or main residence in the United Kingdom (s 108(5)(a)) or, where he has no such residence, the address or location of a place in the United Kingdom where he can regularly be found and, if there is more than one such place, such one of those places as he may select (s 108(5)(b)). As to the meaning of 'United Kingdom' see PARA 9 note 2.

5 Criminal Justice and Immigration Act 2008 s 108(2)(a).

6 Criminal Justice and Immigration Act 2008 s 108(2)(b).

7 Criminal Justice and Immigration Act 2008 s 108(2)(c).

8 Criminal Justice and Immigration Act 2008 s 108(2)(d).

9 Criminal Justice and Immigration Act 2008 s 108(2)(e).

10 Criminal Justice and Immigration Act 2008 s 108(2)(f).

11 Criminal Justice and Immigration Act 2008 s 108(2)(g).

12 Criminal Justice and Immigration Act 2008 s 108(2)(h), (3). At the date at which this volume states the law no regulations had been made for these purposes.

13 See the Criminal Justice and Immigration Act 2008 s 110(1), which requires an offender subject to notification requirements, within the applicable period after each notification date, to notify to the police the information mentioned in s 108(2) (see the text and notes 5-12) unless the offender has already given a notification under s 109(1) (see PARA 611) within that period. For this purpose the 'applicable period' is one year (s 110(5)(b)) unless the last home address notified by the offender under s 108(1) or 109(1) or s 110(1) was the address or location of such a place as is mentioned in s 108(5)(b) (ie was not his sole or main residence: see note 4), in which case it is one week (s 110(5)(a), (6); Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2000/2019, reg 11). A 'notification date' means, in relation to the offender, the date of any notification given by the offender under the Criminal Justice and Immigration Act 2008 s 108(1) or s 109(1) or s 110(1): s 110(2).

14 Ie unless the applicable period would otherwise end while the offender is remanded in or committed to custody by an order of a court or kept in service custody (Criminal Justice and Immigration Act 2008 s 110(3), (4)(a)) serving a sentence of imprisonment or a term of service detention (s 110(4)(b)) or detained in a hospital (s 110(4)(c)).

15 Ie unless the applicable period would otherwise end while the offender is outside the United Kingdom: Criminal Justice and Immigration Act 2008 s 110(4)(d).

16 Criminal Justice and Immigration Act 2008 s 110(3).

17 Where information is notified to the police under the Criminal Justice and Immigration Act 2008 s 108(1), s 109(1) or s 110(1) (see PARA 611) a chief officer of police may, for the purposes of the prevention, detection, investigation or prosecution of offences under Pt 7, supply any such information to the Secretary of State or a person providing services to the Secretary of State in connection with a relevant function (ie a function relating

to social security, child support, employment or training, a function relating to passports or a function under the Road Traffic Act 1988 Pt 3 (ss 87-109C) (driver licensing: see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 442 et seq), for use for the purpose of verifying the information: Criminal Justice and Immigration Act 2008 s 114(1), (2), (7). In relation to information so supplied the reference to verifying the information is a reference to checking its accuracy by comparing it with information held by the Secretary of State in connection with the exercise of a relevant function (where the person is the Secretary of State) or, where the person is a person providing services to the Secretary of State in connection with a relevant function, by that person in connection with the provision of such services, and compiling a report of that comparison: s 114(3).

A report compiled under s 114 may be supplied to a chief officer of police by the Secretary of State or, as the case may be, the person providing services to the Secretary of State in connection with a relevant function (s 115(1)), and may contain any information held by the Secretary of State in connection with the exercise of a relevant function or by the person providing services in connection with the provision of services as mentioned there (s 115(2)). Where such a report contains information within s 115(2), the chief officer to whom it is supplied may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of offences under Pt 7, and may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Pt 7), but for no other purpose: s 115(3).

The supply of information under ss 114, 115 is to be taken not to breach any restriction on the disclosure of information (however arising) (ss 114(4), 115(4)), although those provisions do not authorise the doing of anything that contravenes the Data Protection Act 1998 (Criminal Justice and Immigration Act 2008 s 114(5)). These provisions also do not affect any power to supply information that exists apart therefrom: s 114(6).

18 le, for these purposes, the Criminal Justice and Immigration Act 2008 ss 108(1), 110(1) (see the text and notes 1-13).

19 Criminal Justice and Immigration Act 2008 s 113(2)(a), (3)(a). As to the punishment of, and proceedings for, an offence under s 113 see PARA 604 note 13. A person commits an offence of non-compliance with s 108(1) or s 110(1) on the first day on which he first fails, without reasonable excuse, to comply with the said provision, and continues to commit it throughout any period during which the failure continues: s 113(4)(a). However a person must not be prosecuted under s 113(2) more than once in respect of the same failure: s 113(5).

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611. Notification of changes.

An offender¹ subject to notification requirements² must notify the police³:

- 1997 (1) of any name he uses that has not previously been notified to the police⁴;
- 1998 (2) if there is a change of his home address, of the new home address⁵;
- 1999 (3) if he resides or stays for specified minimum periods⁶ at premises in the United Kingdom⁷ the address of which has previously not been notified to the police⁸, of the address of those premises⁹;
- 2000 (4) if he is released from custody, imprisonment or detention¹⁰; and
- 2001 (5) the prescribed details of any other prescribed change of circumstances¹¹.

Where the required new information¹² is notified the information required to be notified in initial notification¹³ must also be notified¹⁴.

Notification of changes under these provisions affects the annual re-notification schedule¹⁵. Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance, with the notification requirements¹⁶ is an offence¹⁷.

1 As to the meaning of 'offender' see PARA 604 note 2.

2 As to references to an offender subject to notification requirements see PARA 610 note 2.

3 If before the event in question occurs (Criminal Justice and Immigration Act 2008 s 109(4)) or within the period of three days beginning with the day on which it occurs (s 109(1)). If a notification is given before the notifiable event occurs the offender must also specify the date when the event is expected to occur (s 109(4)), and if such a notification is given and the event to which it relates occurs more than two days before the date specified, the notification does not affect the duty imposed by s 109(1) to give notification within the period of three days beginning with the day on which the event occurs (s 109(5)). If a notification is given in accordance with s 109(4) and the event to which it relates has not occurred by the end of the period of three days beginning with the date specified the notification does not affect the duty imposed by s 109(1) (s 109(6)(a)) and the offender must, within the period of six days beginning with the date specified, notify to the police the fact that the event did not occur within the period of three days beginning with the date specified (s 109(6)(b)).

As to the determination of the three and six day periods referred to above see PARA 610 note 3. As to the giving of notifications see PARA 610 note 4. An offender making a notification under s 109 in relation to a prospective change of home address (see the text and note 5) or in relation to premises referred to in s 109(2)(c) (see the text and note 9) may make the notification at a police station that would be a police station in his local police area for the purposes of s 112(1)(a) (see PARA 610 note 4) if the address of those premises were the person's home address: s 112(2).

4 Criminal Justice and Immigration Act 2008 s 109(1)(a), (2)(a), (3)(a). The 'previous notification' referred to is a previous notification under s 108 (see PARA 610) or s 109 (see the text and notes 5-14).

5 Criminal Justice and Immigration Act 2008 s 109(2)(b), (3)(b). As to the meaning of 'home address' see PARA 610 note 4.

6 If for a period of seven days (Criminal Justice and Immigration Act 2008 s 109(9)(a)) or for two or more periods, in any period of 12 months, that taken together amount to seven days (s 109(9)(b)).

7 As to the meaning of 'United Kingdom' see PARA 9 note 2.

8 See note 4.

9 Criminal Justice and Immigration Act 2008 s 109(2)(c), (3)(c).

10 Criminal Justice and Immigration Act 2008 s 109(2)(e), (3)(e). The notification requirements arise under this provision if the offender is released from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital: s 109(2)(a). As to the meanings of 'imprisonment', 'service detention' and 'detained in a hospital' see PARA 610 note 3.

11 Criminal Justice and Immigration Act 2008 s 109(2)(d), (3)(d). 'Prescribed change of circumstances' means any change occurring in relation to any matter in respect of which information is required to be notified by virtue of s 108(2)(h) (see PARA 610) and of a description prescribed by regulations made by the Secretary of State; and the 'prescribed details', in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed: s 109(8). At the date at which this volume states the law no regulations had been made for these purposes.

12 Ie the information referred to in the Criminal Justice and Immigration Act 2008 s 109(3): see the text and notes 4-11.

13 Ie the information referred to in the Criminal Justice and Immigration Act 2008 s 108(2): see PARA 610.

14 Criminal Justice and Immigration Act 2008 s 109(1)(b).

15 See the Criminal Justice and Immigration Act 2008 s 110; and PARA 610.

16 Ie, for these purposes, the Criminal Justice and Immigration Act 2008 s 109(1), (6)(b) (see the text and notes 1-14).

17 Criminal Justice and Immigration Act 2008 s 113(2)(a), (3)(a). As to the punishment of, and proceedings for, an offence under s 113 see PARA 604 note 13. A person commits an offence of non-compliance with s 109(1) on the first day on which he first fails, without reasonable excuse, to comply with the said provision, and continues to commit it throughout any period during which the failure continues: s 113(4)(a). However a person must not be prosecuted under s 113(2) more than once in respect of the same failure: s 113(5).

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612. Foreign travel: notification of departure.

If an offender¹ who is subject to the notification requirements² and who intends to leave the United Kingdom³ for a period of three days or longer⁴ must notify the police⁵ of:

- 2002 (1) the date on which the offender proposes to leave the United Kingdom⁶;
- 2003 (2) the country⁷ (or, if there is more than one, the first country) to which the offender proposes to travel and the proposed point of arrival⁸ in that country⁹;
- 2004 (3) where the offender proposes to travel to more than one country outside the United Kingdom, the offender's proposed point of arrival in each such additional country¹⁰;
- 2005 (4) the identity of any carrier or carriers the offender proposes to use for the purposes of the offender's departure from and return to the United Kingdom, and of travelling to any other point of arrival in a country¹¹;
- 2006 (5) details of the offender's accommodation arrangements for the offender's first night outside the United Kingdom¹²;
- 2007 (6) where the offender proposes to return to the United Kingdom on a particular date, that date¹³; and
- 2008 (7) where the offender proposes to return to the United Kingdom at a particular point of arrival, that point of arrival¹⁴.

Where a relevant offender is required¹⁵ to give a notification and knows the date on which he proposes to leave the United Kingdom and the country (or first country) to which he proposes to travel and the proposed point of arrival in that country¹⁶ more than seven days before the proposed departure date, he must give a notification which sets out that information and as much of the other required¹⁷ information as he holds not less than seven days before that date¹⁸ or, if he has a reasonable excuse for not complying with the seven day notification requirement, as soon as reasonably practicable but in any event not less than 24 hours before that date¹⁹. Provision is also made for notification where the relevant offender does not know his date of departure or destination²⁰, for notification where a person becomes a relevant offender not more than 24 hours before the time of his intended departure²¹, and for the notification of changes in information previously disclosed²².

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance with, with the notification requirements²³ is an offence²⁴.

1 As to the meaning of 'offender' see PARA 604 note 2.

2 As to references to an offender subject to notification requirements see PARA 610 note 2.

3 As to the meaning of 'United Kingdom' see PARA 9 note 2.

4 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 4. These regulations were made under the Criminal Justice and Immigration Act 2008 s 111, pursuant to which the Secretary of State may by regulations make provision with respect to offenders subject to notification requirements, or any description of such offenders, requiring such persons, before they leave the United Kingdom, to give in accordance with the regulations a notification under s 111(2) (see the text and notes 5-10) (s 111(1)(a)) and requiring such persons, if they subsequently return to the

United Kingdom, to give in accordance with the regulations a notification under s 111(3) (see PARA 613) (s 111(1)(b)).

5 Ie before leaving the United Kingdom: Criminal Justice and Immigration Act 2008 s 111(1)(a). A relevant offender gives a notification under s 111(2) or (3) by attending at any police station in the offender's local police area (within the meaning of s 112(5): see PARA 610 note 4), subject to the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 10(2) (see note 20), and giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station: reg 10(1). When giving a notification under the Criminal Justice and Immigration Act 2008 s 111(2) or (3), a relevant offender must also disclose his name (or if he used two or more names, each of those names), his home address and his date of birth: Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 10(3).

6 Criminal Justice and Immigration Act 2008 s 111(2)(a).

7 As to the meaning of 'country' see PARA 606 note 15.

8 In a case in which a relevant offender proposes to arrive in a country by rail, sea or air, the proposed point of arrival is the first station, port or airport at which the offender proposes to disembark; in any other case, the proposed point of arrival is the first place at which the offender proposes to enter the country: Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 3.

9 Criminal Justice and Immigration Act 2008 s 111(2)(b).

10 Criminal Justice and Immigration Act 2008 s 111(2)(c); Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5(1), (2)(a). The information required to be notified pursuant to reg 5(2)(a)-(e) (see the text and notes 11-14) is required to be notified only inasmuch as that information is held by the offender: reg 5(1).

11 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5(2)(b). As to the extent of notification under this requirement see note 10.

12 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5(2)(c). As to the extent of notification under this requirement see note 10.

13 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5(2)(d). As to the extent of notification under this requirement see note 10.

14 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5(2)(e). As to the extent of notification under this requirement see note 10.

15 Ie under the Criminal Justice and Immigration Act 2008 s 111(2) (see the text and notes 5-10).

16 Ie the information required to be disclosed by the Criminal Justice and Immigration Act 2008 s 111(2)(a), (b) (see the text and notes 6-9).

17 Ie required to be given by the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5 (see the text and notes 10-14).

18 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 6(1), (2)(a). This is referred to as the 'seven day notification requirement': reg 6(2)(a).

19 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 6(2)(b).

20 Where the relevant offender does not know the date on which he proposes to leave the United Kingdom and the country (or first country) to which he proposes to travel and the proposed point of arrival in that country (ie the information required to be disclosed by the Criminal Justice and Immigration Act 2008 s 111(2) (a), (b) (see the text and notes 6-9)) more than seven days before the proposed departure date, he must, as soon as reasonably practicable but in any event before his proposed departure from the United Kingdom, give a notification which sets out that information and as much of the other information required to be disclosed by reg 5 (see the text and notes 10-14) as he holds: reg 6(3). As to the giving of notifications see note 5; a relevant offender may give a notification under the Criminal Justice and Immigration Act 2008 s 111(2) as required by the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 6(3), reg 6(5) or reg 7 by attending at any police station: reg 10(2).

21 Where a person becomes a relevant offender not more than 24 hours before the time of his intended departure from the United Kingdom (Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 6(4)(a)) and already intended to leave the United Kingdom at that time prior to becoming a relevant offender (reg 6(4)(b)), he must give a notification which sets out the date on which he proposes to leave the United Kingdom and the country (or first country) to which he proposes to travel and the proposed point of arrival in that country (ie the information required to be disclosed by s 111(2)(a), (b) (see the text and notes 6-9)) and as much of the other information required to be disclosed by reg 5 (see the text and notes 10-14) as he holds before his proposed departure from the United Kingdom: reg 6(5). As to the giving of notifications see notes 5, 20.

22 Where a relevant offender has given a notification under the Criminal Justice and Immigration Act 2008 s 111(2) (Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 7(1)(a)) and at any time prior to his proposed departure from the United Kingdom the information disclosed in that notification becomes inaccurate or, as a statement of all the information mentioned in reg 5 which the offender currently holds, incomplete (reg 7(1)(b)), he must give a further notification under s 111(2) (reg 7(1)). Such further notification must be given not less than 24 hours before the offender's proposed departure from the United Kingdom (reg 7(2)), although where the requirement to give a further notification under reg 7(1) arises less than 24 hours before the offender's proposed departure from the United Kingdom, such further notification must be given before the offender's proposed departure from the United Kingdom (reg 7(3)). As to the giving of notifications see notes 5, 20; a relevant offender giving a further notification under the Criminal Justice and Immigration Act 2008 s 111(2) as required by the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 7 must inform the person to whom the notification is given of the police station at which the offender first gave a notification in respect of the journey in question under the Criminal Justice and Immigration Act 2008 s 111(2): Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 10(4).

23 Ie, for these purposes, any requirement imposed by the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019 (see the text and notes 1-22).

24 Criminal Justice and Immigration Act 2008 s 113(2)(b), (3)(b). As to the punishment of, and proceedings for, an offence under s 113 see PARA 604 note 13. A person commits an offence of non-compliance with any requirement of the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, on the first day on which he first fails, without reasonable excuse, to comply with the requirement in question, and continues to commit it throughout any period during which the failure continues: s 113(4)(b). However a person must not be prosecuted under s 113(2) more than once in respect of the same failure: s 113(5).

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613. Foreign travel: notification of return.

If an offender¹ who is subject to the notification requirements² returns to the United Kingdom³ after leaving for a period of three days or longer⁴ (and thereby becoming liable to notify the police⁵ in connection with his departure) he must notify the police⁶ of his date of return to the United Kingdom⁷ and his point of arrival in the United Kingdom⁸. This requirement does not, however, apply, if the offender has previously given notification⁹ of his date and point of arrival¹⁰ and his return to the United Kingdom was on that date and at that point of arrival¹¹.

Failure without reasonable excuse to comply, or the notification of information known to be false in purported compliance with, with the notification requirements¹² is an offence¹³.

1 As to the meaning of 'offender' see PARA 604 note 2.

2 As to references to an offender subject to notification requirements see PARA 610 note 2.

3 As to the meaning of 'United Kingdom' see PARA 9 note 2.

4 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 4. As to these regulations see PARA 612 note 4.

5 I.e. under the Criminal Justice and Immigration Act 2008 s 111(2): see PARA 612. As to the giving of notifications see PARA 612 note 5.

6 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 8(1). Notification must be given within three days of the offender's return to the United Kingdom: reg 8(2).

7 Criminal Justice and Immigration Act 2008 s 111(3); Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 9(a).

8 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 9(b). As to the point of arrival see PARA 612 note 8.

9 See note 5.

10 I.e. as specified in the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 5(2)(d), (3) (see PARA 612).

11 Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, reg 8(3).

12 I.e. for these purposes, any requirement imposed by the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019 (see the text and notes 1-11).

13 Criminal Justice and Immigration Act 2008 s 113(2)(b), (3)(b). As to the punishment of, and proceedings for, an offence under s 113 see PARA 604 note 13. A person commits an offence of non-compliance with any requirement of the Criminal Justice and Immigration Act 2008 (Violent Offender Orders) (Notification Requirements) Regulations 2009, SI 2009/2019, on the first day on which he first fails, without reasonable excuse, to comply with the requirement in question, and continues to commit it throughout any period during which the failure continues: s 113(4)(b). However a person must not be prosecuted under s 113(2) more than once in respect of the same failure: s 113(5).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/9. ORDERS IN ADDITION TO OR IN LIEU OF SENTENCE/(4) QUASI SENTENCES/(xiv) Violent Offender Orders/B. NOTIFICATION REQUIREMENTS/614. Information about release or transfer.

614. Information about release or transfer.

The Secretary of State may by regulations make provision requiring the person who is responsible for an offender¹ subject to notification requirements² who is serving a sentence of imprisonment or a term of service detention, or detained in a hospital³, to give notice to specified persons⁴ of the fact that that person has become responsible for the offender⁵ and of any occasion when the offender is released⁶ or a different person is to become responsible for the offender⁷.

1 As to the meaning of 'offender' see PARA 604 note 2. The regulations described in the text and notes 2-7 may make provision for determining who is to be taken for these purposes as being responsible for an offender: Criminal Justice and Immigration Act 2008 s 116(4).

2 As to references to an offender subject to notification requirements see PARA 610 note 2.

3 Criminal Justice and Immigration Act 2008 s 116(1). As to the meanings of 'imprisonment', 'service detention' and 'detained in a hospital' see PARA 610 note 3.

4 The persons specified, or of a description specified, in the regulations: Criminal Justice and Immigration Act 2008 s 116(3).

5 Criminal Justice and Immigration Act 2008 s 116(2)(a).

6 Criminal Justice and Immigration Act 2008 s 116(2)(b)(i).

7 Criminal Justice and Immigration Act 2008 s 116(2)(b)(ii).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/615. Purposes of sentencing: offenders over 18.

10. SENTENCING PRINCIPLES AND GUIDELINES

(1) MATTERS TO BE TAKEN INTO ACCOUNT

615. Purposes of sentencing: offenders over 18.

Any court¹ dealing with an offender in respect of his offence must have regard to the following purposes of sentencing²:

- 2009 (1) the punishment of offenders³;
- 2010 (2) the reduction of crime (including its reduction by deterrence)⁴;
- 2011 (3) the reform and rehabilitation of offenders⁵;
- 2012 (4) the protection of the public⁶; and
- 2013 (5) the making of reparation by offenders to persons affected by their offences⁷.

However, this does not apply:

- 2014 (a) in relation to an offender who is aged under 18 at the time of conviction⁸;
- 2015 (b) to an offence the sentence for which is fixed by law⁹;
- 2016 (c) to an offence the sentence for which falls to be imposed under specified provisions as to required custodial sentences or dangerous offenders¹⁰; or
- 2017 (d) in relation to the making¹¹ of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction¹².

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the meanings of 'sentence' and 'sentencing' see PARA 23 note 2.

3 Criminal Justice Act 2003 s 142(1)(a). See *R v Skidmore* [2008] EWCA Crim 1539, [2008] All ER (D) 133 (Aug).

4 Criminal Justice Act 2003 s 142(1)(b). See *R v Preddie* [2007] EWCA Crim 1961, [2007] All ER (D) 44 (Sep) (gang violence to be severely punished despite young age of defendants).

5 Criminal Justice Act 2003 s 142(1)(c).

6 Criminal Justice Act 2003 s 142(1)(d).

7 Criminal Justice Act 2003 s 142(1)(e).

8 Criminal Justice Act 2003 s 142(2)(a). As from a day to be appointed this provision is amended by the Criminal Justice and Immigration Act 2008 s 9(2)(a) so as to remove the words 'at the time of the conviction'. At the date at which this volume states the law no such day had been appointed. For the purposes of any provision of the Criminal Justice Act 2003 Pt 12 (ss 142-305) which requires the determination of the age of a person by the court or the Secretary of State, his age is deemed to be that which it appears to the court or (as the case may be) the Secretary of State to be after considering any available evidence: s 305(2). Although the court must take into account the purposes mentioned in heads (1)-(5) in the text where an offender has attained the age of 18 after the commission of the offence, his culpability is to be judged by reference to his age at the time of the offence: *R v Bowker* [2007] EWCA Crim 1608, [2008] 1 Cr App Rep (S) 412, [2007] All ER (D) 122 (Jul). See also *R v Robson* [2006] EWCA Crim 1414, [2007] 1 All ER 506, [2007] 1 Cr App Rep (S) 301.

9 Criminal Justice Act 2003 s 142(2)(b). As to sentences fixed by law see PARA 15.

10 Criminal Justice Act 2003 s 142(2)(c). The specified provisions are the Firearms Act 1968 s 51A(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 664), the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772) or s 111(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294), the Violent Crime Reduction Act 2006 s 29(4) or (6) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) and the Criminal Justice Act 2003 s 225(2) or s 226(2) (see PARAS 73, 74, 82, 83): s 142(2)(c) (amended by the Violent Crime Reduction Act 2006 Sch 1 para 9(2) and the Criminal Justice and Immigration Act 2008 Sch 26 para 64). A sentence falls to be imposed under the Criminal Justice Act 2003 s 225(2) if the court is obliged to pass a sentence of imprisonment for life or, in the case of a person aged at least 18 but under 21, a sentence of custody for life under that provision and a sentence falls to be imposed under s 226(2) if the court is obliged to pass a sentence of detention for life under that provision: s 305(4)(c), (d) (substituted by the Criminal Justice and Immigration Act 2008 Sch 26 para 72(a)).

11 le under the Mental Health Act 1983 Pt 3 (ss 35-55) (see PARAS 332-339; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 486 et seq).

12 Criminal Justice Act 2003 s 142(2)(d).

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616. Purposes of sentencing: offenders under 18.

It is the principal aim of the youth justice system¹ to prevent offending by children and young persons². In addition to any other duty to which they are subject, it is the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that aim³.

As from a day to be appointed the following applies where a court is dealing with an offender aged under 18 in respect of an offence⁴.

The court must have regard to:

- 2018 (1) the principal aim of the youth justice system which is to prevent offending (or re-offending)⁵ by persons aged under 18⁶;
- 2019 (2) provisions⁷ relating to the welfare of the offender⁸; and
- 2020 (3) the purposes of sentencing (so far as it is not required to do so by head (1))⁹.

The purposes of sentencing are:

- 2021 (a) the punishment of offenders¹⁰;
- 2022 (b) the reform and rehabilitation of offenders¹¹;
- 2023 (c) the protection of the public¹²; and
- 2024 (d) the making of reparation by offenders to persons affected by their offences¹³.

However, the above provisions do not apply:

- 2025 (i) to an offence the sentence for which is fixed by law¹⁴;
- 2026 (ii) to an offence the sentence for which falls to be imposed under specified provisions as to required custodial sentences or dangerous offenders¹⁵;
- 2027 (iii) in relation to the making¹⁶ of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction¹⁷.

1 'Youth justice system' means the system of criminal justice in so far as it relates to children and young persons: Crime and Disorder Act 1998 s 42(1).

2 Crime and Disorder Act 1998 s 37(1). As to the meanings of 'child' and 'young person' see PARA 10 note 5. See also the Sentencing Guidelines Council Guideline *Overarching Principles: Sentencing Youths* (2009); and PARA 639.

3 Crime and Disorder Act 1998 s 37(2).

4 Criminal Justice Act 2003 s 142A (prospectively added by the Criminal Justice and Immigration Act 2008 s 9(1)). At the date at which this volume states the law no day had been appointed for the commencement of this provision.

5 See the Crime and Disorder Act 1998 s 37(1) (notes 1-2).

6 Criminal Justice Act 2003 s 142A(2)(a) (prospectively added: see note 4).

- 7 le in accordance with the Children and Young Persons Act 1933 s 44 (see PARA 10).
- 8 Criminal Justice Act 2003 s 142A(2)(b) (prospectively added: see note 4).
- 9 Criminal Justice Act 2003 s 142A(2)(c) (prospectively added: see note 4).
- 10 Criminal Justice Act 2003 s 142A(3)(a) (prospectively added: see note 4).
- 11 Criminal Justice Act 2003 s 142A(3)(b) (prospectively added: see note 4).
- 12 Criminal Justice Act 2003 s 142A(3)(c) (prospectively added: see note 4).
- 13 Criminal Justice Act 2003 s 142A(3)(d) (prospectively added: see note 4).
- 14 Criminal Justice Act 2003 s 142A(4)(a) (prospectively added: see note 4).
- 15 Criminal Justice Act 2003 s 142A(4)(b) (prospectively added: see note 4). The specified provisions are the Firearms Act 1968 s 51A(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 664), the Violent Crime Reduction Act 2006 s 29(6) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) and the Criminal Justice Act 2003 s 226(2) (see PARAS 82, 83): Criminal Justice Act 2003 s 142A(4)(b) (as so prospectively added).
- 16 le under the Mental Health Act 1983 Pt 3 (ss 35-55) (see PARAS 332-339; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 486 et seq).
- 17 Criminal Justice Act 2003 s 142A(4)(c) (prospectively added: see note 4).

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617. Circumstances of the offence.

In forming an opinion for the purposes of the statutory provisions concerning the imposition of community sentences¹, community sentences which consist of or include community orders² or community sentences which consist of or include one or more youth community orders³ and community sentences which consist of youth rehabilitation orders with intensive supervision and surveillance or fostering⁴, or for the purposes of the statutory provisions restricting the imposition of custodial sentences⁵ or making provision as to the length of such sentences⁶, a court⁷ must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated⁸ with it, including any aggravating or mitigating factors⁹.

1 Ie the opinion (for a community sentence) that the offence, or the combination of the offence or one or more of the offences associated with it, was serious enough to warrant such a sentence: see the Criminal Justice Act 2003 s 148(1); and PARA 164. As to the meaning of 'community sentence' see PARA 163. As to the meaning of 'sentence' for these purposes see PARA 23 note 2.

2 Ie the opinion that the restrictions on liberty imposed by the community order (where a community sentence consists of or includes such an order) are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it: see the Criminal Justice Act 2003 s 148(2)(b); and PARA 164. As to the meaning of 'community order' see PARA 163.

3 Ie (where a community sentence consists of or includes one or more youth community orders) the opinion that the restrictions on liberty imposed by the order or orders are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it: see the Criminal Justice Act 2003 s 148(3)(b); and PARA 164. As to youth community orders see PARA 229 et seq.

4 Ie the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that, but for the Criminal Justice and Immigration Act 2008 Sch 1 para 3 or 4 (see PARAS 204-205), a custodial sentence would be appropriate (or, if the offender was aged under 12 at the time of conviction, would be appropriate if the offender had been aged 12) or, if offender was aged under 15 at the time of conviction, the opinion that the offender is a persistent offender: see s 1(4)(b), (c); and PARA 204.

5 Ie the opinion (for a custodial sentence) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence: see the Criminal Justice Act 2003 s 152(2); and PARA 19. As to the meaning of 'custodial sentence' see the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2 (definition applied by the Criminal Justice Act 2003 s 305(1)).

6 Ie the opinion that the custodial sentence is the shortest that is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it: see the Criminal Justice Act 2003 s 153(2); and PARA 32.

7 As to the meaning of 'court' see PARA 1 note 1.

8 As to an 'associated offence' see PARA 19 note 9.

9 Criminal Justice Act 2003 s 156(1). The defendant's previous convictions, sentences and cautions (including dates of release and the expiry dates of sentences) appear in the antecedents: see *R v Egan* [2004] EWCA Crim 630, (2004) Times, 9 March. A statement of previous convictions made to a court considering how to deal with an offender may not include any order made by a court with respect to him otherwise than on a conviction: see the Rehabilitation of Offenders Act 1974 s 7(5). As to the meaning of 'conviction' for these purposes see PARA 660 note 3. As to methods of proving previous convictions, if not admitted, see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1347. In the Crown Court seven copies of the antecedents will be prepared in respect of each defendant by the police immediately following committal proceedings or upon receipt of a notice of appeal, excluding non-imprisonable motoring offences: *Practice*

Direction (Criminal Proceedings: Consolidation) [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at III.27.4, III.27.5, CA. Two copies are to be provided to the Crown Prosecution Service directly, the remaining five to be sent to the Crown Court: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.5. The court will send one copy to the defence and one to the Probation Service; the remaining copies are for the court's use: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.5. Where, following conviction, a custodial order is made, one copy is to be attached to the order sent to the prison: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.5. As to the standard format for antecedents see *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.3. 'Committal proceedings' for this purpose include committals for sentence, transfers under the Criminal Justice Act 1987 s 4 (prospectively repealed) or the Criminal Justice Act 1991 s 53 (repealed): *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.4. The antecedents must be provided within 21 days of committal or transfer in each case; and any points arising from them must be raised with the police by the defence solicitor as soon as possible and, where there is time, at least seven days before the hearing date so that the matter can be resolved prior to that hearing: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.6. If the antecedents report contains anything disputed by the offender, prosecuting counsel must either call admissible evidence to prove the disputed facts or omit them from the evidence: *R v Sargeant* (1974) 60 Cr App Rep 74, [1975] Crim LR 173, CA; *R v Coughlan, R v Young* (1976) 63 Cr App Rep 33, CA. Seven days before the hearing date the police will check the record of convictions, and details of any additional convictions will be provided: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.7. These details should be provided as described above and attached to the documents already supplied; and details of any outstanding cases will also be provided at this stage: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.7. In the Crown Court the police will provide brief details of the circumstances of the last three similar convictions and/or of convictions likely to be of interest to the court, the latter being judged on a case by case basis: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.1. This information should be provided separately and attached to the antecedents as described above: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.1, CA. In magistrates' courts antecedents will be prepared by the police and submitted to the Crown Prosecution Service with the case file: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.8. Five copies of the antecedents will be prepared in respect of each defendant and provided to the Crown Prosecution Service (unless there is a local agreement between the Crown Prosecution Service and the court that alters the arrangement) who will be responsible for distributing them to others at the sentencing hearing: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.9. Normally two copies will be provided to the court, one to the defence and one to the Probation Service when appropriate; where, following conviction, a custodial order is made, one of the court's copies is to be attached to the order sent to the prison: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.9. Where antecedents have been provided to the court some time before the hearing the police will, if requested to do so by the Crown Prosecution Service, check the record of convictions and details of any additional convictions: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.10. Details of additional convictions should be provided as described above and attached to the documents already supplied; and details of any additional outstanding cases will also be provided at this stage: *Practice Direction (Criminal Proceedings: Consolidation)* at III.27.10.

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618. Determining the seriousness of the offence.

In considering the seriousness of any offence, the court¹ must consider the offender's culpability² in committing the offence and any harm³ which the offence caused, was intended to cause or might foreseeably have caused⁴.

In considering the seriousness of an offence (the 'current offence') committed by an offender who has one or more previous convictions⁵, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular to:

- 2028 (1) the nature of the offence to which the conviction relates and its relevance to the current offence⁶; and
- 2029 (2) the time that has elapsed since the conviction⁷.

In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor⁸.

Assessing the seriousness of an offence is only the first step in the process of determining the appropriate sentence in an individual case⁹. Matching the offence to a type and level of sentence is assisted by the application of the respective threshold tests for custodial and community sentences¹⁰ and by consulting the sentencing guidelines for an offence for guidance on factors that are likely to indicate whether a custodial sentence or other disposal is most likely to be appropriate¹¹.

1 As to the meaning of 'court' see PARA 1 note 1.

2 Four levels of criminal culpability can be identified for sentencing purposes:

938 (1) where the offender has the intention to cause harm, with the highest culpability when an offence is planned: the worse the harm intended, the greater the seriousness (*Sentencing Guidelines Council Guideline Overarching Principles: Seriousness* (2004) paras 1.6, 1.7(i));

939 (2) where the offender is reckless as to whether harm is caused, that is, where he appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people (*Overarching Principles: Seriousness* (2004) para 1.7(ii));

940 (3) where the offender has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results (*Overarching Principles: Seriousness* (2004) para 1.7(iii));

941 (4) where the offender is guilty of negligence (*Overarching Principles: Seriousness* (2004) para 1.7(iv)).

As to culpability see further PARA 619. Where liability is strict and no culpability needs to be proved for a conviction, the degree of culpability is still important when determining sentence: *Overarching Principles: Seriousness* (2004) para 1.7 note. This definitive guideline (see PARA 638) applies only to those aged 18 or over although there are some aspects that will assist courts assessing the seriousness of offences committed by those under 18: *Overarching Principles: Seriousness* (2004) Foreword.

As to the meanings of 'sentence' and 'sentencing' see PARA 23 note 2.

3 The harm may be to individual victims, to the community and other types of harm: see further the *Overarching Principles: Seriousness* (2004) paras 1.8-1.14.

4 Criminal Justice Act 2003 s 143(1). The culpability of the offender in the particular circumstances of an individual case should be the initial factor in determining the seriousness of an offence. As to the assessment of culpability of harm see *Overarching Principles: Seriousness* (2004) paras 1.15-1.29; and note 2. See *A-G's Reference (No 60 of 2009)* [2009] EWCA Crim 2693, [2009] All ER (D) 182 (Dec) ('What is now required, without of course diminishing the attention to be paid to the actions of the Defendant and his intentions at the time, and the true level of his culpability, is that specific attention must also be paid to the consequences of his crime': per Lord Judge CJ at [13]). The key factor in determining whether sentencing levels should be enhanced in response to prevalence of a particular crime in an area will be the level of harm being caused in the locality: enhanced sentences should be exceptional and in response to exceptional circumstances. It is essential that sentencers have supporting evidence of prevalence from an external source. Sentencers must sentence within the sentencing guidelines once the prevalence has been addressed. See *R v Lanham* [2008] EWCA Crim 2450, [2009] 1 Cr App Rep (S) 592, [2009] Crim LR 125; *Overarching Principles: Seriousness* (2004) paras 1.38-1.39. See also *R v Oosthuizen* [2005] EWCA Crim 1978, [2006] 1 Cr App Rep (S) 285, [2005] Crim LR 979; *R v Wood* [2009] EWCA Crim 651, [2009] Crim LR 543, [2009] All ER (D) 49 (Apr); *A-G's Reference (No 60 of 2009)* [2009] EWCA Crim 2693, [2009] All ER (D) 182 (Dec).

5 Any reference in the Criminal Justice Act 2003 s 143(2) (see the text and notes 6-7) to a previous conviction is to be read as a reference either to a previous conviction by a court in the United Kingdom (s 143(4)(a)) or a previous conviction of a service offence within the meaning of the Armed Forces Act 2006 ('conviction' here including anything that under s 376(1) and (2) is to be treated as a conviction) (Criminal Justice Act 2003 s 143(4)(b) (substituted by the Armed Forces Act 2006 Sch 16 para 216)) or (as from a day to be appointed) a previous conviction by a court in another member state of a relevant offence under the law of that State (s 143(4)(aa) (s 143(4)(aa), (c), (6) prospectively added, s 143(5) prospectively substituted, by the Coroners and Justice Act 2009 Sch 17 para 6, Sch 23 Pt 5)) or a finding of guilt in respect of a member state service offence (Criminal Justice Act 2003 s 143(4)(c) (as so prospectively added)). As to service proceedings generally see **ARMED FORCES** vol 2(2) (Reissue) PARA 302 et seq.

As from a day to be appointed, for the purposes of the Criminal Justice Act 2003 s 143:

- 942 (1) an offence is 'relevant' if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence (s 143(6)(a) (as so prospectively added));
- 943 (2) 'member state service offence' means an offence which was the subject of proceedings under the service law of a member state other than the United Kingdom and would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006: see **ARMED FORCES**), if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence (Criminal Justice Act 2003 s 143(6)(b) (as so prospectively added));
- 944 (3) 'Her Majesty's forces' has the same meaning as in the Armed Forces Act 2006 (see **ARMED FORCES**) (Criminal Justice Act 2003 s 143(6)(c) (as so prospectively added)); and
- 945 (4) 'service law', in relation to a member state other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State (143(6)(d) (as so prospectively added)).

At the date at which this volume states the law no day had been appointed for the coming into force of the amendments made by the Coroners and Justice Act 2009.

6 Criminal Justice Act 2003 s 143(2)(a). Until a day to be appointed s 143(2), (4) (see the text and note 5) do not prevent the court from treating a previous conviction by a court outside the United Kingdom as an aggravating factor in any case where the court considers it appropriate to do so; as from that day those provisions do not prevent the court from treating a previous conviction by a court outside both the United Kingdom and any other member state, or a previous conviction by a court in any member state (other than the United Kingdom) of an offence which is not a relevant offence, as an aggravating factor in any case where the court considers it appropriate to do so: s 143(5) (prospectively substituted: see note 5).

7 Criminal Justice Act 2003 s 143(2)(b). See note 6.

8 Criminal Justice Act 2003 s 143(3).

9 *Overarching Principles: Seriousness* (2004) para 1.30.

10 *Overarching Principles: Seriousness* (2004) para 1.30.

- 11 See the *Overarching Principles: Seriousness* (2004) para 1.37. As to these thresholds see PARAS 19, 164.

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619. Aggravating factors.

Among the factors which indicate a higher than usual level of culpability on the part of the offender are:

- 2030 (1) the offence was committed whilst on bail for other offences¹;
- 2031 (2) a failure to respond to previous sentences²;
- 2032 (3) the offence was racially or religiously aggravated³;
- 2033 (4) the offence was motivated by, or demonstrated, hostility to the victim based on his sexual orientation (or presumed sexual orientation)⁴;
- 2034 (5) the offence was motivated by, or demonstrated, hostility based on the victim's disability (or presumed disability)⁵;
- 2035 (6) a previous conviction or convictions, particularly where a pattern of repeat offending is disclosed⁶;
- 2036 (7) the planning of an offence⁷;
- 2037 (8) an intention to commit more serious harm than actually resulted from the offence⁸;
- 2038 (9) the offenders operated in groups or gangs⁹;
- 2039 (10) 'professional' offending¹⁰;
- 2040 (11) commission of the offence for financial gain (where this is not inherent in the offence itself)¹¹;
- 2041 (12) a high level of profit from the offence¹²;
- 2042 (13) an attempt to conceal or dispose of evidence¹³;
- 2043 (14) a failure to respond to warnings or concerns expressed by others about the offender's behaviour¹⁴;
- 2044 (15) the offence was committed whilst on licence¹⁵;
- 2045 (16) the offence was motivated by hostility towards a minority group, or a member or members of it¹⁶;
- 2046 (17) the deliberate targeting of vulnerable victim or victims¹⁷;
- 2047 (18) the commission of an offence while under the influence of alcohol or drugs¹⁸;
- 2048 (19) the use of a weapon to frighten or injure a victim¹⁹;
- 2049 (20) deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence²⁰;
- 2050 (21) abuse of power²¹; and
- 2051 (22) abuse of a position of trust²².

Factors indicating a more than usually serious degree of harm include:

- 2052 (a) multiple victims²³;
- 2053 (b) an especially serious physical or psychological effect on the victim, even if unintended²⁴;
- 2054 (c) a sustained assault or repeated assaults on the same victim²⁵;
- 2055 (d) a particularly vulnerable victim²⁶;
- 2056 (e) the location of the offence (for example, in an isolated place)²⁷;
- 2057 (f) the offence is committed against those working in the public sector or providing a service to the public²⁸;

- 2058 (g) the presence of others (for example, relatives, especially children or a partner of the victim)²⁹;
- 2059 (h) additional degradation of the victim (for example, taking photographs of a victim as part of a sexual offence)³⁰; and
- 2060 (i) in property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (for example, where the theft of equipment causes serious disruption to a victim's life or business)³¹.

Some of these factors are integral features of certain offences; in such cases, the presence of the aggravating factor is already reflected in the offence and cannot be used as justification for increasing the sentence further³².

1 Sentencing Guidelines Council Guideline *Overarching Principles: Seriousness* (2004) para 1.22.

2 *Overarching Principles: Seriousness* (2004) para 1.22.

3 *Overarching Principles: Seriousness* (2004) para 1.22. See PARA 620.

4 *Overarching Principles: Seriousness* (2004) para 1.22. See PARA 621.

5 *Overarching Principles: Seriousness* (2004) para 1.22. See PARA 621.

6 *Overarching Principles: Seriousness* (2004) para 1.22.

7 *Overarching Principles: Seriousness* (2004) para 1.22.

8 *Overarching Principles: Seriousness* (2004) para 1.22.

9 *Overarching Principles: Seriousness* (2004) para 1.22.

10 *Overarching Principles: Seriousness* (2004) para 1.22.

11 *Overarching Principles: Seriousness* (2004) para 1.22.

12 *Overarching Principles: Seriousness* (2004) para 1.22.

13 *Overarching Principles: Seriousness* (2004) para 1.22.

14 *Overarching Principles: Seriousness* (2004) para 1.22.

15 *Overarching Principles: Seriousness* (2004) para 1.22.

16 *Overarching Principles: Seriousness* (2004) para 1.22.

17 *Overarching Principles: Seriousness* (2004) para 1.22.

18 *Overarching Principles: Seriousness* (2004) para 1.22.

19 *Overarching Principles: Seriousness* (2004) para 1.22. See *R v Rowland* [2008] EWCA Crim 2188, [2008] All ER (D) 143 (Aug), CA (air pistol; minor injuries); *R v Maina* [2009] All ER (D) 157 (Nov) (use of knives).

20 *Overarching Principles: Seriousness* (2004) para 1.22.

21 *Overarching Principles: Seriousness* (2004) para 1.22.

22 *Overarching Principles: Seriousness* (2004) para 1.22.

23 *Overarching Principles: Seriousness* (2004) para 1.23. See *A-G's Reference (No 85 of 2007)*; *R v Bushell* [2007] EWCA Crim 3218, [2008] 2 Cr App Rep (S) 221, [2007] All ER (D) 159 (Dec), CA (the fact that there were multiple victims had to be relevant to sentencing in cases of causing grievous bodily harm with intent where there was high culpability and a high degree of harm).

24 *Overarching Principles: Seriousness* (2004) para 1.23.

25 *Overarching Principles: Seriousness* (2004) para 1.23.

26 *Overarching Principles: Seriousness* (2004) para 1.23.

27 *Overarching Principles: Seriousness* (2004) para 1.23.

28 *Overarching Principles: Seriousness* (2004) para 1.23.

29 *Overarching Principles: Seriousness* (2004) para 1.23. Professional football matches are watched by families and professional footballers have become role models, so it is a significant factor where a footballer assaults an opposing player during a televised match: *R v Cotterill* [2007] EWCA Crim 526, [2007] 2 Cr App Rep (S) 391.

30 *Overarching Principles: Seriousness* (2004) para 1.23.

31 *Overarching Principles: Seriousness* (2004) para 1.23.

32 *Overarching Principles: Seriousness* (2004) para 1.21. Where two or more aggravating factors are features of an offence, care needs to be taken to avoid 'double-counting': *Overarching Principles: Seriousness* (2004) para 1.21.

UPDATE

619 Aggravating factors

NOTES 6, 7, 9, 17, 19--See *A-G's Reference (Nos 103, 104 and 105 of 2009)*; *R v Denley* [2010] All ER (D) 89 (Apr), CA (premises targeted, victim was in one sense vulnerable and in occupation, committed at night by assailants who had been disguised and had planned the offence).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/620. Racial or religious aggravation as an aggravating factor.

620. Racial or religious aggravation as an aggravating factor.

Where a court¹ is considering the seriousness of an offence (other than one of the specific racially or religiously aggravated offences²) and the offence was racially or religiously aggravated³, the court must treat that fact as an aggravating factor⁴ and state in open court⁵ that the offence was so aggravated⁶.

1 As to the meaning of 'court' see PARA 1 note 1.

2 I.e. other than an offence under the Crime and Disorder Act 1998 ss 29-32 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 155-156, 335, 561): Criminal Justice Act 2003 s 145(1).

3 As to the meaning of 'racially or religiously aggravated' see the Crime and Disorder Act 1998 s 28; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 154 (definition applied by the Criminal Justice Act 2003 s 145(3)). In the Crown Court, if evidence to the effect that the offence was racially or religiously aggravated has not been adduced at the trial, the prosecution should seek to adduce such evidence at a Newton hearing; even though the question of racial or religious aggravation has not arisen at the trial, the judge is entitled to interpret the verdict of the jury, and may sentence the defendant on the basis of evidence disclosing such aggravating factors which could have resulted in a more serious charge (although he cannot sentence on the basis that a more serious offence has been committed), but either a Newton hearing should be held to establish any such aggravation or the judge should give notice of his intention to sentence on an aggravated basis: *R v O'Callaghan* [2005] EWCA Crim 317, [2005] 2 Cr App Rep (S) 514, [2005] Crim LR 486. As to Newton hearings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1354. Where the prosecution accepts a plea of guilty to assault occasioning actual bodily harm, and does not proceed on a count charging racially aggravated assault occasioning actual bodily harm, it is not open to the sentencer to pass sentence on the basis that the assault was in fact racially aggravated: *R v McGillivray* [2005] EWCA Crim 604, [2005] 2 Cr App Rep (S) 366, [2005] Crim LR 484. The fact that one (or more) of a number of joint offenders has demonstrated racial or religious hostility in the prescribed way does not make the provision applicable to any of them who has not: *R v Davies*, *R v Ely* [2003] EWCA Crim 3700, [2004] 2 Cr App Rep (S) 148, [2004] Crim LR 677.

4 Criminal Justice Act 2003 s 145(2)(a). The court should determine the sentence which would be appropriate if the offence had not been racially or religiously aggravated, and then add an appropriate amount depending on the circumstances to reflect the racial or religious aggravation: *R v Saunders* [2000] 1 Cr App Rep 458, [2000] 2 Cr App Rep (S) 71, CA; *R v Kelly*, *R v Donnolly* [2001] EWCA Crim 170, [2001] 2 Cr App Rep (S) 341. As to how that amount is to be determined see *R v Saunders* (but note the comments in *A-G's Reference (No 92 of 2003)* [2004] EWCA Crim 924, (2004) Times, 21 April, [2004] All ER (D) 407 (Mar); *R v Kelly*, *R v Donnolly* above).

5 As to the meaning of 'open court' see PARA 23 note 3.

6 Criminal Justice Act 2003 s 145(2)(b).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/621. Disability or sexual orientation as an aggravating factor.

621. Disability or sexual orientation as an aggravating factor.

Where the court¹ is considering the seriousness of an offence in circumstances where:

- 2061 (1) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on the sexual orientation (or presumed sexual orientation) of the victim² or a disability³ (or presumed disability) of the victim⁴; or
- 2062 (2) the offence was motivated (wholly or partly) by hostility towards persons who are of a particular sexual orientation⁵ or by hostility towards persons who have a disability or a particular disability⁶,

it must treat the fact that the offence was committed in any of those circumstances as an aggravating factor⁷ and must state in open court⁸ that the offence was committed in such circumstances⁹.

It is immaterial for these purposes¹⁰ whether or not the offender's hostility is also based, to any extent, on any other factor¹¹.

1 As to the meaning of 'court' see PARA 1 note 1.

2 Criminal Justice Act 2003 s 146(1), (2)(a)(i). Section 146 is of no effect in relation to an offence committed before 4 April 2005: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 2 para 5(1), (2).

3 ie any physical or mental impairment: Criminal Justice Act 2003 s 146(5).

4 Criminal Justice Act 2003 s 146(2)(a)(ii).

5 Criminal Justice Act 2003 s 146(2)(b)(i).

6 Criminal Justice Act 2003 s 146(2)(b)(ii).

7 Criminal Justice Act 2003 s 146(3)(a).

8 As to the meaning of 'open court' see PARA 23 note 3.

9 Criminal Justice Act 2003 s 146(3)(b).

10 ie for the purposes of the Criminal Justice Act 2003 s 146(2).

11 Criminal Justice Act 2003 s 146(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/622. Terrorist connection as an aggravating factor.

622. Terrorist connection as an aggravating factor.

The following provisions apply where a court in England and Wales¹ is considering for the purposes of sentence² the seriousness of one of the following offences³. The provisions also apply where a service court is considering for the purposes of sentence the seriousness of a service offence as respects which the corresponding civil offence is one of the following offences⁴. The offences are⁵:

- 2063 (1) the common law offences of murder, manslaughter, culpable homicide, kidnapping and abduction⁶;
- 2064 (2) soliciting murder⁷;
- 2065 (3) maliciously administering poison etc so as to endanger life or inflict grievous bodily harm⁸;
- 2066 (4) causing bodily injury by explosives⁹;
- 2067 (5) using explosives etc with intent to do grievous bodily harm¹⁰;
- 2068 (6) placing explosives with intent to do bodily injury¹¹;
- 2069 (7) making or having gunpowder etc with intent to commit or enable any person to commit any felony mentioned in the Offences against the Person Act 1861¹²;
- 2070 (8) causing explosion likely to endanger life or property¹³;
- 2071 (9) attempting to cause explosion or making or keeping explosive with intent to endanger life or property¹⁴;
- 2072 (10) making or possession of explosive under suspicious circumstances¹⁵;
- 2073 (11) the punishment of accessories¹⁶;
- 2074 (12) the restriction on development etc of certain biological agents and toxins and of biological weapons¹⁷;
- 2075 (13) hostage-taking¹⁸;
- 2076 (14) hijacking¹⁹;
- 2077 (15) destroying, damaging or endangering safety of aircraft²⁰;
- 2078 (16) other acts endangering or likely to endanger safety of aircraft²¹;
- 2079 (17) offences in relation to certain dangerous articles²²;
- 2080 (18) inducing or assisting the commission of an offence under heads (14) to (16) outside the United Kingdom²³;
- 2081 (19) offences relating to damage to the environment²⁴;
- 2082 (20) offences of importing or exporting etc nuclear materials: extended jurisdiction²⁵;
- 2083 (21) so far as they apply to an offence specified in heads (1) to (20) and (22) to (32), offences involving preparatory acts and threats²⁶;
- 2084 (22) endangering safety at aerodromes²⁷;
- 2085 (23) the hijacking of ships²⁸;
- 2086 (24) seizing or exercising control of fixed platforms²⁹;
- 2087 (25) destroying ships or fixed platforms or endangering their safety³⁰;
- 2088 (26) so far as relating to an offence under head (23) or (25), inducing or assisting the commission of an offence outside the United Kingdom³¹;
- 2089 (27) offences against the safety of channel tunnel trains and the tunnel system³²;
- 2090 (28) the use etc of chemical weapons³³;
- 2091 (29) premises or equipment for producing chemical weapons³⁴;

- 2092 (30) the use etc of nuclear weapons³⁵;
 2093 (31) hoaxes involving noxious substances or things³⁶;
 2094 (32) any ancillary offence relating to heads (1) to (31)³⁷.

If, having regard to the material before it for the purposes of sentencing, it appears to the court that the offence has or may have a terrorist connection, the court must determine whether that is the case³⁸ and, for that purpose, the court may hear evidence, and must take account of any representations made by the prosecution and the defence, as in the case of any other matter relevant for the purposes of sentence³⁹.

If the court determines that the offence has a terrorist connection, the court must treat that fact as an aggravating factor and must state in open court that the offence was so aggravated⁴⁰.

1 Equivalent provision is made in relation to Scotland: see the Counter-Terrorism Act 2008 s 31.

2 For these purposes 'sentence', in relation to an offence, includes any order made by a court when dealing with a person in respect of the offence: Counter-Terrorism Act 2008 s 30(5).

3 See the Counter-Terrorism Act 2008 s 30(1). As to the meaning of 'terrorism' see the Terrorism Act 2000 s 1; the Terrorism Act 2006 s 20(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 383 (definition applied by the Counter-Terrorism Act 2008 s 92). An offence has a 'terrorist connection' if the offence is, or takes place in the course of, an act of terrorism or is committed for the purpose of terrorism: s 93.

4 See the Counter-Terrorism Act 2008 s 32(1).

5 See the Counter-Terrorism Act 2008 Sch 2. Sections 30, 32 have effect in relation only to offences committed on or after 18 June 2009 (ie the day on which those provisions came into force): ss 30(6), 32(5); Counter-Terrorism Act 2008 (Commencement No 3) Order 2009, SI 2009/1256, art 2(b). The Secretary of State may amend the Counter-Terrorism Act 2008 Sch 2 and any such order is subject to affirmative resolution procedure: see s 33(1), (2). Any order adding an offence to Sch 2 applies only in relation to offences committed after the order comes into force: s 33(2). At the date at which this volume states the law no such orders had been made.

6 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 84 et seq, 136 et seq.

7 Ie an offence under the Offences against the Person Act 1861 s 4: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 104.

8 Ie an offence under the Offences against the Person Act 1861 s 23: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124.

9 Ie an offence under the Offences against the Person Act 1861 s 28: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125.

10 Ie an offence under the Offences against the Person Act 1861 s 29: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126.

11 Ie an offence under the Offences against the Person Act 1861 s 30: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 130.

12 Ie an offence under the Offences against the Person Act 1861 s 64: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 711.

13 Ie an offence under the Explosive Substances Act 1883 s 2: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127.

14 Ie an offence under the Explosive Substances Act 1883 s 3: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 128.

15 Ie an offence under the Explosive Substances Act 1883 s 4: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 711.

- 16 le an offence under the Explosive Substances Act 1883 s 5: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 711.
- 17 le an offence under the Biological Weapons Act 1974 s 1: see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 469.
- 18 le an offence under the Taking of Hostages Act 1982 s 1: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 468.
- 19 le an offence under the Aviation Security Act 1982 s 1: see **AIR LAW** vol 2 (2008) PARAS 624-625.
- 20 le an offence under the Aviation Security Act 1982 s 2: see **AIR LAW** vol 2 (2008) PARA 628.
- 21 le an offence under the Aviation Security Act 1982 s 3: see **AIR LAW** vol 2 (2008) PARA 629.
- 22 le an offence under the Aviation Security Act 1982 s 4: see **AIR LAW** vol 2 (2008) PARA 630.
- 23 le an offence under the Aviation Security Act 1982 s 6(2): see **AIR LAW** vol 2 (2008) PARAS 624, 628, 629.
- 24 le an offence under the Nuclear Material (Offences) Act 1983 s 1B.
- 25 le an offence under the Nuclear Material (Offences) Act 1983 s 1C.
- 26 le an offence under the Nuclear Material (Offences) Act 1983 s 2.
- 27 le an offence under the Aviation and Maritime Security Act 1990 s 1: see **AIR LAW** vol 2 (2008) PARA 631.
- 28 le an offence under the Aviation and Maritime Security Act 1990 s 9: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1210.
- 29 le an offence under the Aviation and Maritime Security Act 1990 s 10: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1211.
- 30 le an offence under the Aviation and Maritime Security Act 1990 s 11: see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1212.
- 31 le an offence under the Aviation and Maritime Security Act 1990 s 14(4): see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1215.
- 32 le an offence under the Channel Tunnel (Security) Order 1994, SI 1994/570, arts 4-9.
- 33 le an offence under the Chemical Weapons Act 1996 s 2: see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 474.
- 34 le an offence under the Chemical Weapons Act 1996 s 11: see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARAS 473, 480.
- 35 le an offence under the Anti-Terrorism, Crime and Security Act 2001 s 47: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 623.
- 36 le an offence under the Anti-Terrorism, Crime and Security Act 2001 s 114: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 854.
- 37 See the Counter-Terrorism Act 2008 Sch 2.
- 38 Counter-Terrorism Act 2008 ss 30(1), (2), 32(1), (2).
- 39 Counter-Terrorism Act 2008 ss 30(3), 32(3).
- 40 Counter-Terrorism Act 2008 ss 30(4), 32(4).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/623. Reduction in sentences for guilty pleas.

623. Reduction in sentences for guilty pleas.

In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court¹, a court must take into account:

- 2095 (1) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty²; and
- 2096 (2) the circumstances in which this indication was given³.

A reduction in sentence for a plea of guilty should only be applied to the punitive elements of a penalty: the guilty plea reduction has no impact on a sentencing decision in relation to ancillary orders, including orders of disqualification from driving⁴.

Where a sentencer is in doubt as to whether a custodial sentence is appropriate the reduction attributable to a guilty plea will be a relevant consideration⁵. Alternatively, it may operate to reduce the length of the sentence with the proportion of the sentence calculated by reference to the circumstances in which the guilty plea was indicated, in particular the stage in the proceedings⁶.

In the case of an offence the sentence for which falls to be imposed under one of the specified minimum sentence provisions⁷, nothing in that provision prevents the court, after taking into account any matter relating to the stage in the proceedings at which the offender indicated his intention to plead guilty and the circumstances in which this indication was given⁸, from imposing any sentence which is not less than 80 per cent of that specified in that provision⁹.

1 As to the meaning of 'court' see PARA 1 note 1.

2 Criminal Justice Act 2003 s 144(1)(a).

3 Criminal Justice Act 2003 s 144(1)(b).

4 Sentencing Guidelines Council Guideline *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 2.6. The revised guideline applies to all cases sentenced on or after 23 July 2007: see *Reduction in Sentence for a Guilty Plea* (2004 (Revised 2007)) foreword. As to cases sentenced on or after 10 January 2005 see Sentencing Guidelines Council Guideline *Reduction in Sentence for a Guilty Plea* (2004).

Credit may also be given for ready co-operation with the authorities; this will depend on the particular circumstances of the individual case: Sentencing Guidelines Council Guideline *Overarching Principles: Seriousness* (2004) para 1.29. See also PARAS 624-625.

5 *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 2.3. Where this is amongst the factors leading to the imposition of a non-custodial sentence there will be no need to apply a further reduction on account of the guilty plea: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 2.3. A similar approach is appropriate where the reduction for a guilty plea is amongst the factors leading to the imposition of a financial penalty or discharge instead of a community order: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 2.3.

6 See *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 4.1. The greatest reduction will be where the plea was indicated at the first reasonable opportunity: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 4.1. Save where the Criminal Justice Act 2003 s 144(2) (see text and notes 7-9) applies, the level of the reduction will be gauged on a sliding scale ranging from a recommended one third (where the guilty plea was entered at the first reasonable opportunity in relation to the offence for which sentence is being imposed), reducing to a recommended one quarter (where a trial date has been set) and to a recommended one tenth (for a guilty plea entered at the 'door of the court' or after the trial has begun): see *Reduction in Sentence for a*

Guilty Plea (Revised 2007) paras 4.2, 4.3(i)-(iii). Any defendant is entitled to put the prosecution to proof and every defendant who is guilty should be encouraged to indicate that guilt at the first reasonable opportunity: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 5.2. Where the prosecution case is overwhelming it may not be appropriate to give the full reduction that would otherwise be given and, whilst there is a presumption in favour of the full reduction being given where a plea has been indicated at the first reasonable opportunity, the fact that the prosecution case is overwhelming without relying on admissions from the defendant may be a reason justifying departure from the guideline: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 5.3. If, after pleading guilty, there is a Newton hearing (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1354) and the offender's version is rejected, this should be taken into account in determining the level of sentence: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 4.3(iv). See also *R v Underwood* [2004] EWCA Crim 2256, [2005] 1 Cr App Rep (S) 478. If the not guilty plea was entered and maintained for tactical reasons (eg to retain privileges on remand), a late guilty plea should attract very little, if any, discount: *Reduction in Sentence for a Guilty Plea* (Revised 2007) para 4.3(v). Credit should not be withheld or reduced on the ground that the defendant had no alternative but to plead guilty (*R v Forbes* [2005] EWCA Crim 2069, [2005] NLJR 1631; *A-G's References (Nos 14 and 15 of 2006)*; *R v French* [2006] EWCA Crim 1335, [2007] 1 All ER 718, [2007] 1 Cr App Rep (S) 215), nor on the ground that the defendant has in error been charged with a less serious offence than appropriate, which restricted the judge's sentencing powers (*R v Dalby*, *R v Berry* [2005] EWCA Crim 1292, [2006] 1 Cr App Rep (S) 216, [2005] Crim LR 730). A judge is entitled to refuse a reduction for a guilty plea where there is an overwhelming case and where a defendant clearly lies as to his involvement in the offence during a Newton hearing: *R v Elicin* [2008] EWCA Crim 2249, [2009] 1 Cr App Rep (S) 561, [2008] All ER (D) 60 (Sep).

7 le the Powers of Criminal Courts (Sentencing) Act 2000 s 110(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772) or s 111(2) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294): Criminal Justice Act 2003 s 144(2). Note that there is no provision for a discount for a guilty plea where the sentence is a mandatory sentence imposed under the Firearms Act 1968 s 51A (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 664).

8 le any matter referred to in the Criminal Justice Act 2003 s 144(1) (see the text and notes 1-3).

9 Criminal Justice Act 2003 s 144(2).

UPDATE

623 Reduction in sentences for guilty pleas

NOTE 7--See *R v Darling* [2009] EWCA Crim 1610, [2010] 1 Cr App Rep (S) 420 (once judge decided unjust to apply minimum term, ordinary sentencing principles and standards applied).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/624. Mitigation.

624. Mitigation.

Nothing in the statutory provisions relating to the imposition of community sentences¹, the imposition of custodial sentences², pre-sentence reports and other requirements³, or the fixing of fines⁴ or youth rehabilitation orders with intensive supervision and surveillance⁵ or youth rehabilitation orders with fostering⁶:

- 2097 (1) prevents a court⁷ from mitigating an offender's sentence⁸ by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence⁹;
- 2098 (2) prevents a court from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence and, in the case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences¹⁰; or
- 2099 (3) is to be taken either as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender¹¹ or as restricting any power¹² which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances¹³.

Heads (2) and (3) above are without prejudice to the generality of head (1) above¹⁴.

Some factors may indicate that the offender's culpability is unusually low, or that the harm caused by an offence is less than usually serious¹⁵, for example:

- 2100 (a) a greater degree of provocation than normally expected¹⁶;
- 2101 (b) mental illness or disability¹⁷;
- 2102 (c) youth or age, where it affects the responsibility of the individual defendant¹⁸;
- 2103 (d) the fact that the offender played only a minor role in the offence¹⁹.

A court, after taking into account such matters as, in its opinion, are relevant in mitigation of sentence, may pass a community sentence even though it is of the opinion that the offence, or the combination of the offence and one or more offences associated²⁰ with it, was so serious that a community sentence could not normally be justified for the offence²¹.

Personal mitigating factors which may be considered include the offender's previous good character²², any assistance he may have given to the police as to offences committed by others which leads to their apprehension and prosecution²³, any serious delay between the commission of the offence and trial²⁴, and the fact that the crime would not have been committed but for the activities of an informer or police officer²⁵. The fact that an offender's business may collapse, leading to the unemployment of its staff, is not a mitigating factor where the offence relates to the manner in which the business was conducted²⁶.

¹ Criminal Justice Act 2003 s 166(1)(a). For the relevant statutory provisions see s 148 (see PARA 164) and or s 151(2) or (2B) (see PARAS 170, 206): Criminal Justice Act 2003 s 166(1)(a) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 76(7)). As to the meaning of 'community sentence' see PARA 163.

The Criminal Justice Act 2003 s 166 is of no effect in relation to an offence committed before 4 April 2005: Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, art 2(1), Sch 2 para 5(1), (2).

2 Criminal Justice Act 2003 s 166(1)(b). For the relevant statutory provisions see s 152, s 153 or s 157; and PARAS 19, 32, 627. As to the meaning of 'custodial sentence' see the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2 (definition applied by the Criminal Justice Act 2003 s 305(1)).

3 Criminal Justice Act 2003 s 166(1)(c). For the relevant statutory provisions see s 156; and PARA 617.

4 Criminal Justice Act 2003 s 166(1)(d). For the relevant statutory provisions see s 164; and PARA 144.

5 Criminal Justice Act 2003 s 166(1)(e) (s 166(1)(e), (f) added by the Criminal Justice and Immigration Act 2008 Sch 4 para 79(2)).

6 Criminal Justice Act 2003 s 166(1)(f) (as added: see note 5).

7 As to the meaning of 'court' see PARA 1 note 1.

8 As to the meaning of 'sentence' for these purposes see PARA 23 note 2.

9 Criminal Justice Act 2003 s 166(1).

10 Criminal Justice Act 2003 s 166(3) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 79(3)).

11 For these purposes, 'mentally disordered', in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983 (see PARAS 333 note 4; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 486 et seq): Criminal Justice Act 2003 s 166(6).

12 Ie whether under the Mental Health Act 1983 or otherwise.

13 Criminal Justice Act 2003 s 166(5) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 79(3)).

14 Criminal Justice Act 2003 s 166(4).

15 Sentencing Guidelines Council Guideline *Overarching Principles: Seriousness* (2004) para 1.24. As to the levels of criminal culpability see PARA 618 note 2.

16 *Overarching Principles: Seriousness* (2004) para 1.25.

17 *Overarching Principles: Seriousness* (2004) para 1.25.

18 *Overarching Principles: Seriousness* (2004) para 1.25. In sexual offences the age of the offender and the age of offences cannot be given too much weight, but they are mitigating factors: *A-G's Reference (No 70 of 2008)*; *R v W* [2009] EWCA Crim 100, [2009] 2 Cr App Rep (S) 454, (2009) Times, 2 February.

19 *Overarching Principles: Seriousness* (2004) para 1.25.

20 As to when an offence is associated with another see PARA 19 note 9.

21 Criminal Justice Act 2003 s 166(2). Section 152(2) (see PARA 19) does not prevent this: s 166(2).

22 However, this is of minor relevance in rape (*R v Billam* [1986] 1 All ER 985, 82 Cr App Rep 347, CA); and is not a powerful factor when dealing with armed bank and post office robberies (*R v Turner* (1975) 61 Cr App Rep 67 at 91, CA); and the previous good character of a courier in an offence of importation of drugs is of less importance than in other cases (*R v Aramah* (1982) 76 Cr App Rep 190, [1983] Crim LR 271, CA; *R v Saunders* (1991) 92 Cr App Rep 6, CA; and see, in connection with *R v Aramah*, *R v Ronchetti* [1998] 2 Cr App Rep (S) 100, [1998] Crim LR 227, CA). It is appropriate to consider positive good character, such as service to the local community: *R v Clark (Joan)* (1999) Times, 27 January, CA. Good character is of comparatively little mitigating significance in the case of a defendant convicted of possession of heroin with intent to supply it to a person in prison: *R v Ellingham* (1999) Times, 22 March, CA. As to the appropriateness of imposing a custodial sentence on a female defendant of previous good character with dependent children see *R v Mills* [2002] EWCA Crim 26, [2002] 2 Cr App Rep (S) 229, [2002] Crim LR 331.

For an offender of previously good character the conviction and a custodial sentence are, in themselves, a substantial punishment (*R v Vinson* (1981) 3 Cr App Rep (S) 315, [1982] Crim LR 192, CA) and thus a short term is often a sufficient punishment and deterrent (*R v Clarke* [1982] 3 All ER 232, 75 Cr App Rep 119, CA; *R v Bibi*

(1980) 71 Cr App Rep 360, [1980] Crim LR 732, CA). This is often referred to as the effect of 'the clang of the prison gates': see eg *R v Weston* (1980) 2 Cr App Rep (S) 391, CA.

23 The assistance must, however, be given sufficiently early to be potentially useful: *R v Debbag*, *R v Izett* (1991) 12 Cr App Rep (S) 733, CA. See also *R v A and B* [1999] 1 Cr App Rep (S) 52, CA. The amount of the reduction will vary from one-half to two-thirds depending on the circumstances: *R v King* (1985) 82 Cr App Rep 120, 7 Cr App Rep (S) 227, CA. As to the factors to be considered in deciding whether a sentence should be discounted, and the extent of the discount, see further *R v Lowe* (1977) 66 Cr App Rep 122, CA; *R v Davies and Gorman* (1978) 68 Cr App Rep 319, CA; *R v Rose*, *R v Sapiano* (1980) 2 Cr App Rep (S) 239, CA; *R v Wood* (1987) 9 Cr App Rep (S) 238, [1987] Crim LR 715, CA; *R v Sivan* (1988) 87 Cr App Rep 407, 10 Cr App Rep (S) 282, CA (disapproving *R v Preston*, *R v McAleny* (1987) 9 Cr App Rep (S) 155, [1987] Crim LR 587, CA). See also *R v Aramah* (1982) 76 Cr App Rep 190, [1983] Crim LR 271, CA (substantial reduction appropriate for a plea of guilty coupled with considerable assistance to the police); *R v Afzal* (1989) Times, 14 October, CA.

Where a defendant pleads guilty and gives truthful evidence against an accomplice, he will be given a greater discount in his sentence than if he pleads guilty but fails to give such evidence: *R v Wood* [1997] 1 Cr App Rep (S) 347, [1996] Crim LR 916, CA. The Court of Appeal may review cases where a defendant pleads guilty and receives credit for supplying information but the value of that information is not fully appreciated by the sentencing judge: *R v A (Informer: Reduction of Sentence)*, *R v B (Informer: Reduction of Sentence)* [1998] Crim LR 757, (1998) Times, 1 May, CA. A defendant is entitled to receive credit for meritorious behaviour relating to an earlier unconnected offence: *R v Alexander* [1997] 2 Cr App Rep (S) 74, CA. As to guidelines for sentencing judges dealing with confidential police reports about defendants who have given information or assistance to the police see *R v X* [1999] 2 Cr App Rep 125, [1999] Crim LR 678, CA. In respect of cases where the assistance is given in pursuance of a written agreement with a specified prosecutor see also PARA 625.

24 See eg *R v Regan* [1979] Crim LR 261, CA; *R v Hockey* [1980] Crim LR 594, CA; *R v Tierney* [1982] Crim LR 53, CA; *R v Barrick* (1985) 81 Cr App Rep 78, 7 Cr App Rep (S) 142, CA; *R v Tiso* (1990) 12 Cr App Rep (S) 122, [1990] Crim LR 607, CA.

25 See *R v Sang*, *R v Mangan* [1979] 2 All ER 46, 68 Cr App Rep 240, CA; affd sub nom *R v Sang* [1980] AC 402, 69 Cr App Rep 282, HL. See also *R v Underhill* (1979) 1 Cr App Rep (S) 270, CA; *R v Beaumont* (1987) 9 Cr App Rep (S) 342, [1987] Crim LR 786, CA; *R v Chapman*, *R v Denton* (1989) 11 Cr App Rep (S) 222, [1989] Crim LR 846, CA. Test purchases of drugs by undercover police officers in endeavouring to obtain evidence of drug dealing is not a mitigating factor where the dealer would have sold in any event (*R v Springer* [1999] 1 Cr App Rep (S) 217, [1998] Crim LR 912, CA; *R v Mayeri* [1999] 1 Cr App Rep (S) 304, CA), nor is the use of test letters in order to obtain evidence that postal workers are stealing mail (*R v Ramen* (1988) 10 Cr App Rep (S) 334, CA), and nor is the fact that the defendant suffered anxiety created by a 'cut-throat' defence (*R v Thomas (Corey)* [2005] EWCA Crim 2023, (2005) Times, 20 October (co-defendant had said that the defendant had killed the victim)).

26 *A-G's Reference (No 89 of 2006)* [2006] EWCA Crim 2570, [2007] ICR 1047, [2007] 1 Cr App Rep (S) 621.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/625. Assistance by defendant: reduction in sentence and review of sentence.

625. Assistance by defendant: reduction in sentence and review of sentence.

If a defendant:

- 2104 (1) following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence¹; and
- 2105 (2) has, pursuant to a written agreement made with a specified prosecutor², assisted or offered to assist the investigator or prosecutor in relation to that or any other offence³,

then in determining what sentence⁴ to pass on the defendant the court may take into account the extent and nature of the assistance given or offered⁵.

If the Crown Court has passed a sentence on a person in respect of an offence⁶ and the person either:

- 2106 (a) receives a discounted sentence⁷ in consequence of his having offered in pursuance of a written agreement⁸ to give assistance to the prosecutor or investigator of an offence, but knowingly fails to any extent to give assistance in accordance with the agreement⁹;
- 2107 (b) receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance¹⁰; or
- 2108 (c) receives a sentence which is not discounted but in pursuance of a written agreement subsequently gives or offers to give assistance to the prosecutor or investigator of an offence¹¹,

then a specified prosecutor may at any time refer the case back to the court by which the sentence was passed if the person is still serving his sentence¹² and the specified prosecutor thinks it is in the interests of justice to do so¹³. A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates¹⁴. If the court is satisfied that a person who has received a discounted sentence in consequence of having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence¹⁵ has knowingly failed to any extent to give assistance in accordance with the agreement, it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate¹⁶. In a case of a person who either receives a discounted sentence in consequence of having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement gives or offers to give further assistance¹⁷ or receives a sentence which is not discounted but in pursuance of a written agreement subsequently gives or offers to give assistance to the prosecutor or investigator of an offence¹⁸, the court may take into account the extent and nature of the assistance given or offered¹⁹ and substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate²⁰. A person in respect of whom a reference is so made, and the specified

prosecutor, may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the Crown Court²¹.

If in any of these circumstances the court passes a sentence which is less than it would have passed but for the assistance given or offered it must state in open court²², unless it thinks that it would not be in the public interest to do so, that it has passed a lesser sentence than it would otherwise have passed²³ and what the greater sentence would have been²⁴. If, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as so mentioned, that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining either the sentence²⁵ or, in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve²⁶.

1 Serious Organised Crime and Police Act 2005 s 73(1)(a).

2 As to the specified prosecutors see the Serious Organised Crime and Police Act 2005 s 71; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 48 (definition applied by ss 73(10), 74(11)(b)). An agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor: s 73(9).

3 Serious Organised Crime and Police Act 2005 s 73(1)(b).

4 For these purposes, a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve; and a reference to a lesser sentence must be construed accordingly: Serious Organised Crime and Police Act 2005 ss 73(8)(a), 74(15).

5 Serious Organised Crime and Police Act 2005 s 73(2). The court's power under this provision is unaffected by anything in any enactment which:

946 (1) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances) (s 73(5)(a)); or

947 (2) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances) (s 73(5)(b)).

For these purposes a reference to 'imprisonment' includes a reference to any other custodial sentence within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 s 76 (see PARA 20 note 2): Serious Organised Crime and Police Act 2005 ss 73(8)(b), 74(15).

The common law principles apply where assistance is given and sentence is passed before the commencement of s 73: *R v Z* [2007] EWCA Crim 1473, [2008] 1 Cr App Rep (S) 344, [2007] All ER (D) 312 (Jun). As to the approach of the court when conducting a review of sentence see *R v P*; *R v Blackburn* [2007] EWCA Crim 2290, [2008] 2 All ER 684, [2008] 2 Cr App Rep (S) 16.

6 Serious Organised Crime and Police Act 2005 s 74(1)(a). A person does not fall within s 74(2) (see the text and notes 7-11) if: (1) he was convicted of an offence for which the sentence is fixed by law (s 74(13)(a)); and (2) he did not plead guilty to the offence for which he was sentenced (s 74(13)(b)).

7 A discounted sentence is a sentence passed in pursuance of Serious Organised Crime and Police Act 2005 s 73 (see the text and notes 1-5) or s 74(6) (see the text and notes 17-20): s 74(10).

8 References to a written agreement are references to an agreement made in writing with a specified prosecutor: Serious Organised Crime and Police Act 2005 s 74(11)(a).

9 Serious Organised Crime and Police Act 2005 s 74(1)(b), (2)(a).

10 Serious Organised Crime and Police Act 2005 s 74(2)(b).

11 Serious Organised Crime and Police Act 2005 s 74(2)(c).

12 Serious Organised Crime and Police Act 2005 s 74(3)(a).

13 Serious Organised Crime and Police Act 2005 s 74(3)(b). The Crime and Disorder Act 1998 s 57E applies to hearings in proceedings relating to a reference under s 74(3) as it applies to sentencing hearings: s 75A (added by the Police and Justice Act 2006 Sch 14 para 62).

14 Serious Organised Crime and Police Act 2005 s 74(4). The court in which proceedings relating to a reference under s 74(3) (s 75(1)(a)), and any other proceedings arising in consequence of them (s 75(1)(b)), will be or are being heard may make such order as it thinks appropriate to exclude from the proceedings any person who is not a member or officer of the court (s 75(2)(a), (4)(a)), a party to the proceedings (s 75(4)(b)), counsel or a solicitor for a party to the proceedings (s 75(4)(c)) or otherwise directly concerned with the proceedings (s 75(4)(d)), and to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made) (s 75(2)(b)). Such an order may be made only to the extent that the court thinks that it is necessary to do so to protect the safety of any person (s 75(3)(a)) and that it is in the interests of justice (s 75(3)(b)). These provisions do not affect any other power which the court has by virtue of any rule of law or other enactment to exclude any person from proceedings (s 75(5)(a)) or to restrict the publication of any matter relating to proceedings (s 75(5)(b)).

In relation to any proceedings under s 74, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications): Serious Organised Crime and Police Act 2005 s 74(12)(a). As to the order that has been made see the Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006, SI 2006/2135.

15 Ie a person falling within the Serious Organised Crime and Police Act 2005 s 74(2)(a) (see the text and notes 7-9).

16 Serious Organised Crime and Police Act 2005 s 74(5). Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by s 74(5) has been served: s 74(7). The Criminal Justice Act 2003 s 174(1)(a) (duty to give reasons for sentence: see PARA 23) or s 270 (duty to give reasons for applying or disapplying early-release provisions in connection with a person in respect of whom a mandatory life sentence is passed: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90), as the case may be, applies to a sentence substituted under the Serious Organised Crime and Police Act 2005 s 74(5) unless the court thinks that it is not in the public interest to disclose that the person falls within s 74(2)(a) (see the text and notes 7-9, 15): s 74(14).

17 Ie a person falling within the Serious Organised Crime and Police Act 2005 s 74(2)(b) (see the text and note 10).

18 Ie a person falling within the Serious Organised Crime and Police Act 2005 s 74(2)(c) (see the text and note 11).

19 Serious Organised Crime and Police Act 2005 s 74(6)(a). Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by s 74(6) has been served: s 74(7). The court's power under this provision is unaffected by anything in any enactment which:

948 (1) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances) (ss 73(5)(a), 74(15)); or

949 (2) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances) (ss 73(5)(b), 74(15)).

20 Serious Organised Crime and Police Act 2005 s 74(6)(b). See note 19.

21 Serious Organised Crime and Police Act 2005 s 74(8). The Criminal Appeal Act 1968 s 33(3) (limitation on appeal from the criminal division of the Court of Appeal: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1966) does not prevent an appeal to the Supreme Court under the Serious Organised Crime and Police Act 2005 s 74: s 74(9). As to the Supreme Court see PARA 53 note 1.

22 As to the meaning of 'open court' see PARA 23 note 3. The Serious Organised Crime and Police Act 2005 73(3) (see the text and notes 23-24) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice of the matters specified in s 73(3) to both the prosecutor and the defendant: ss 73(4), 74(15). If s 73(3) does not so apply, the Criminal Justice Act 2003 s 174(1)(a) (duty to give reasons for sentence: see PARA 23) and s 270 (duty to give reasons for applying or disapplying early-release provisions in connection with a person in respect of

whom a mandatory life sentence is passed: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90) do not apply to the extent that the explanation will disclose that a sentence has been discounted pursuant to these provisions: Serious Organised Crime and Police Act 2005 ss 73(7), 74(15).

23 Serious Organised Crime and Police Act 2005 ss 73(3)(a), 74(15).

24 Serious Organised Crime and Police Act 2005 ss 73(3)(b), 74(15).

25 Serious Organised Crime and Police Act 2005 ss 73(6)(a), 74(15).

26 Serious Organised Crime and Police Act 2005 ss 73(6)(b), 74(15).

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626. Procedural requirements for imposing community sentences and discretionary custodial sentences.

In forming an opinion in respect of the passing of a community sentence¹, the court must take into account any information about the offender which is before it².

A court must obtain and consider a pre-sentence report³ before:

- 2109 (1) in the case of a custodial sentence⁴, forming an opinion⁵ in connection with sentencing as to the seriousness of the offence or the necessity of passing a custodial sentence or extended sentence for reasons of public protection⁶; or
- 2110 (2) in the case of a community sentence, forming an opinion in accordance with the statutory provisions concerning the imposition of community sentences, community sentences which consist of or include community orders or community sentences which consist of or include one or more youth community orders⁷, or any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order or youth rehabilitation order⁸.

However, a court need not obtain a pre-sentence report if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain one⁹.

¹ The opinion (where a community sentence consists of or includes a community order) that the particular requirement or requirements forming part of the community order is, or taken together are, the most suitable for the offender (see the Criminal Justice Act 2003 s 148(2)(a); and PARA 164): s 156(2) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 77(3), Sch 28 Pt 1).

² Criminal Justice Act 2003 s 156(2).

³ A 'pre-sentence report' is a report which, with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by an appropriate officer (Criminal Justice Act 2003 s 158(1)(a)) and contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State (s 158(1)(b)). Subject to any rules made under s 158(1)(b) and to s 158(1B), the court may accept a pre-sentence report given orally in open court: s 158(1A) (s 158(1A), (1B) (added by the Criminal Justice and Immigration Act 2008 s 12)). But a pre-sentence report that relates to an offender aged under 18 and is required to be obtained and considered before the court forms an opinion mentioned in the Criminal Justice Act 2003 s 156(3)(a), must be in writing: s 158(1B) (as so added). In s 158(1), 'appropriate officer' means, where the offender is aged 18 or over, an officer of a local probation board or an officer of a provider of probation services (s 158(2)(a) (amended by SI 2008/912)); and, where the offender is aged under 18, an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team (Criminal Justice Act 2003 s 158(2)(b) (amended by the Children Act 2004 s 64, Sch 5 Pt 4; and SI 2008/912)). As to the meanings of 'local probation board' and 'youth offending team' see PARA 98 note 17. As to local probation boards and providers of probation services see PARAS 733-760. As to youth offending teams see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702 et seq.

No custodial or community sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion as required by these provisions, but any court on an appeal against such a sentence must obtain a pre-sentence report if none was obtained by the court below (Criminal Justice Act 2003 s 156(6)(a)) (although this does not apply if the court is of the opinion either that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report (s 156(7)(a)) or that although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report (s 156(7)(b)) and must consider any such report obtained by it or by that court (s 156(6)(b)). Where the offender is aged under 18, the court must not

form the opinion mentioned in s 156(7) unless there exists a previous pre-sentence report obtained in respect of the offender (s 156(8)(a)) and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report (s 156(8)(b)). See *R v Inner London Crown Court, ex p McCann* (1990) 154 JP 917, DC (if it is not necessarily minded to follow a pre-sentence report, the court should warn the defendant when the report is ordered that recommendations in a pre-sentence report are not binding, although a failure to do so will not ground judicial review). Where a pre-sentence report has been prepared and there is a dispute over the facts of a case, such as the reasons why the crime was committed, the court must hear evidence to resolve that dispute, or pass sentence on the basis of the facts as contained in the report: *R v Oakley* [1998] 1 Cr App Rep (S) 100, [1997] Crim LR 607, CA. As to the admissibility in evidence of a confession contained in a pre-sentence report see *R v Elleray* [2003] EWCA Crim 553, [2003] 2 Cr App Rep 165; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1545.

When a court purposely postpones sentence for a report to ascertain the offender's suitability for a community sentence, it thereby creates in the offender's mind an expectation of an order if the report is favourable. If the report does recommend a community sentence, the court ought to adopt that alternative as a feeling of injustice is otherwise aroused: *R v Gillam* (1980) 2 Cr App Rep (S) 267, [1981] Crim LR 55, CA; *R v Millwood* (1982) 4 Cr App Rep (S) 281, [1982] Crim LR 832, CA. See also *R v Rennes* (1985) 7 Cr App Rep (S) 343, [1986] Crim LR 193, CA. It is otherwise if the court makes it clear to the offender that it is not holding out any express or implied promise or expectation that a favourable report will necessarily be adopted: see *R v Moss* (1983) 5 Cr App Rep (S) 209, CA; *R v Stokes* (1983) 5 Cr App Rep (S) 449, CA; *R v Horton, R v Alexander* (1985) 7 Cr App Rep (S) 299, CA. The issue is whether the circumstances created an expectation of a non-custodial sentence which it would be unjust to disappoint: *R v Norton, R v Claxton* (1989) 11 Cr App Rep (S) 143, [1989] Crim LR 663, CA.

A person released on bail pending an obligatory pre-sentence report, without being warned that a custodial sentence might be passed, is not entitled to assume that a community sentence would be imposed: *R v Woodin* (1993) 15 Cr App Rep (S) 307, [1994] Crim LR 72, CA; *R v Renan* (1994) 15 Cr App Rep (S) 722, [1994] Crim LR 379, CA. Given that the court is statutorily obliged to obtain the report and the purpose for which it is required, the judge is not obliged to warn the offender that he is still liable to be sentenced to imprisonment: *R v Woodin*. It is, however, better practice for the court, when adjourning for a pre-sentence report and granting bail, to warn the offender that this does not mean that a non-custodial sentence is likely: *R v Renan*.

The defendant must be clearly told not to assume that a custodial sentence is ruled out where he is further assessed on the suitability of a community sentence after pre-sentence reports: *R v Chamberlain* (1994) 16 Cr App Rep (S) 473, [1995] Crim LR 85, CA.

4 As to the meaning of 'custodial sentence' see the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2 (definition applied by the Criminal Justice Act 2003 s 305(1)).

5 Ie, in the case of a custodial sentence, the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence (see the Criminal Justice Act 2003 s 152(2); and PARA 19) or that the custodial sentence is the shortest that is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it (see s 153(2); and PARA 32); in respect of a life sentence or imprisonment for public protection for serious offences, the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see s 225(1)(b); and PARA 73); the like opinion in respect of detention for life and detention for public protection for serious offences committed by those under 18 (see s 226(1)(b); and PARA 82); or (in the case of extended sentences for certain violent or sexual offences committed by persons aged 18 or over) the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see s 227(1)(b); and PARA 75) or (in the case of extended sentences for certain violent or sexual offences committed by persons aged under 18) the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, and (where the specified offence is a serious offence) that the case is not one in which a sentence of detention for life or for public protection is required (see s 228(1)(b); and PARA 84).

6 Criminal Justice Act 2003 s 156(3)(a).

7 Ie the opinion (for a community sentence) that the offence, or the combination of the offence or one or more of the offences associated with it, was serious enough to warrant such a sentence (see the Criminal Justice Act 2003 s 148(1); and PARA 164); the opinion that the restrictions on liberty imposed by the community order (where a community sentence consists of or includes such an order) are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it (see s 148(2)(b); and PARA 164); or that the offence, or combination of offences associated with it, was so serious that, but for the Criminal Justice and Immigration Act 2008 Sch 1 para 3 or 4, a custodial sentence would be appropriate (or, if the offender was aged under 12 at the time of conviction, would be appropriate if the offender had been aged 12) (see s 1(4)(b); and PARAS 204, 617 note 4); or if the offender was aged under 15 at the time of conviction, that the offender is a persistent offender (see s 1(4)(c); and PARA 204): see the Criminal Justice Act 2003 s 156(3)(b) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 77(4)(a)).

8 Criminal Justice Act 2003 s 156(3)(b) (amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 77(4)(b)).

9 Criminal Justice Act 2003 s 156(4). Where the offender is aged under 18, the court must not form this opinion unless there exists a previous pre-sentence report obtained in respect of the offender (s 156(5)(a)) and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report (s 156(5)(b)). As to the determination of a person's age for these purposes see PARA 615 note 8.

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627. Additional requirements in case of mentally disordered offender.

Without prejudice to the generality of the provisions concerning pre-sentence reports¹, where an offender is or appears to be mentally disordered², the court³ must obtain and consider a medical report⁴ before passing a custodial sentence⁵ other than one fixed by law⁶. However, this rule does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report⁷.

Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court must consider:

- 2111 (1) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise)⁸; and
- 2112 (2) the likely effect of such a sentence on that condition and on any treatment which may be available for it⁹.

1 Criminal Justice Act 2003 s 157(7). As to these provisions see s 156; and PARA 617. As to the meaning of 'pre-sentence report' see PARA 626 note 3.

2 For these purposes, 'mentally disordered', in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983 (see PARA 333; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 486 et seq): Criminal Justice Act 2003 s 157(5).

3 As to the meaning of 'court' see PARA 1 note 1.

4 For these purposes, 'medical report' means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of the Mental Health Act 1983 s 12 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 482-483) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder: Criminal Justice Act 2003 s 157(6). As to registered medical practitioners see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 4.

5 As to the meaning of 'custodial sentence' see the Powers of Criminal Courts (Sentencing) Act 2000 s 76; and PARA 20 note 2 (definition applied by the Criminal Justice Act 2003 s 305(1)).

6 Criminal Justice Act 2003 s 157(1). As to sentences fixed by law see PARA 15. No custodial sentence which is passed in a case to which s 157(1) applies is invalidated by the failure of a court to comply with s 157(1), but any court on an appeal against such a sentence must obtain a medical report if none was obtained by the court below (s 157(4)(a)) and must consider any such report obtained by it or by that court (s 157(4)(b)).

7 Criminal Justice Act 2003 s 157(2).

8 Criminal Justice Act 2003 s 157(3)(a).

9 Criminal Justice Act 2003 s 157(3)(b).

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628. Disclosure of pre-sentence reports etc.

Where the court¹ obtains a pre-sentence report², other than a report given orally in open court³, the court must give a copy of the report:

- 2113 (1) to the offender or his legal representative⁴;
- 2114 (2) if the offender is aged under 18⁵, to any parent or guardian⁶ of his who is present in court⁷; and
- 2115 (3) to the prosecutor⁸.

However, if the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm⁹ to the offender, a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian¹⁰. In addition, if the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for him to be given it¹¹.

Where:

- 2116 (a) a report by an officer of a local probation board¹² or a member of a youth offending team¹³ is made to any court (other than a youth court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence¹⁴; and
- 2117 (b) the report is not a pre-sentence report¹⁵,

the court must give a copy of the report to the offender or his legal representative¹⁶ and, if the offender is aged under 18, to any parent or guardian¹⁷ of his who is present in court¹⁸. However, if the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report would be likely to create a risk of significant harm to the offender, a complete copy of the report need not be given to the offender, or as the case may be, to that parent or guardian¹⁹.

1 As to the meaning of 'court' see PARA 1 note 1.

2 As to the meaning of 'pre-sentence report' see PARA 626 note 3.

3 As to the meaning of 'open court' see PARA 23 note 3.

4 Criminal Justice Act 2003 s 159(1), (2)(a) (amended by the Legal Services Act 2007 Sch 21 para 147).

5 As to the determination of a person's age for these purposes see PARA 615 note 8.

6 As to the meaning of 'guardian' see the Children and Young Persons Act 1933 s 107(1); and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 747 (definition applied by the Criminal Justice Act 2003 s 305(1)). In relation to an offender aged under 18 for whom a local authority has parental responsibility and who is either in its care (s 159(6)(a)) or is provided with accommodation by it in the exercise of any social services functions (s 159(6)(b)), references in s 159 to the offender's parent or guardian are to be read as references to that authority (s 159(6)). As to the meaning of 'local authority' for the purposes of ss 159, 160 see the Children Act 1989 s 105(1); and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 138 (definition applied by the

Criminal Justice Act 2003 s 159(7)). As to the meaning of 'parental responsibility' for those purposes see the Children Act 1989 s 3; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 134 (definition applied by the Criminal Justice Act 2003 s 159(7)). As to the meaning of 'social services functions' in relation to a local authority for those purposes see the Local Authority Social Services Act 1970 s 1A; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 588; **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) PARAS 1005-1006 (definition applied by the Criminal Justice Act 2003 s 159(7)).

7 Criminal Justice Act 2003 s 159(2)(b).

8 Criminal Justice Act 2003 s 159(2)(c). The 'prosecutor' is the person having the conduct of the proceedings in respect of the offence: s 159(2)(c). No information obtained by virtue of s 159(2)(c) may be used or disclosed otherwise than for the purpose of determining whether representations as to matters contained in the report need to be made to the court (s 159(5)(a)) or making such representations to the court (s 159(5)(b)).

9 As to the meaning of 'harm' in the Criminal Justice Act 2003 ss 159, 160 see the Children Act 1989 s 31; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 274 (definition applied by the Criminal Justice Act 2003 s 159(7)).

10 Criminal Justice Act 2003 s 159(3).

11 Criminal Justice Act 2003 s 159(4). At the date at which this volume states the law no such order had been made, but by virtue of the Interpretation Act 1978 s 17(2)(b), the Pre-Sentence Report Disclosure (Prescription of Prosecutors) Order 1998, SI 1998/191, continues to have effect for these purposes. The following descriptions of prosecutors are prescribed: (1) a Crown prosecutor; (2) any other person acting on behalf of the Crown Prosecution Service; (3) a person acting on behalf of the Commissioners for Her Majesty's Revenue and Customs; (4) a person acting on behalf of the Secretary of State for Social Security; and (5) a person acting on behalf of the Director of the Serious Fraud Office: Pre-Sentence Report Disclosure (Prescription of Prosecutors) Order 1998, SI 1998/191, art 2; Commissioners for Revenue and Customs Act 2005 s 50(1), (7). There is no longer a Secretary of State for Social Security; social security matters are now the responsibility of the Secretary of State for Work and Pensions.

12 As to the meaning of 'local probation board' see PARA 98 note 17.

13 As to the meaning of 'youth offending team' see PARA 98 note 17.

14 Criminal Justice Act 2003 s 160(1)(a).

15 Criminal Justice Act 2003 s 160(1)(b).

16 Criminal Justice Act 2003 s 160(2)(a) (amended by the Legal Services Act 2007 Sch 21 para 148).

17 In relation to an offender aged under 18 for whom a local authority has parental responsibility and who is either in its care (Criminal Justice Act 2003 s 160(4)(a)) or is provided with accommodation by them in the exercise of any social services functions (s 160(4)(b)), references in s 160 to his 'parent or guardian' are to be read as references to that authority: s 160(4).

18 Criminal Justice Act 2003 s 160(2)(b).

19 Criminal Justice Act 2003 s 160(3).

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629. Pre-sentence drug testing.

As from a day to be appointed¹, where a person aged 14² or over is convicted of an offence and the court³ is considering passing a community sentence⁴ or a suspended sentence⁵, it may, for the purpose of ascertaining whether the offender has any specified Class A drug⁶ in his body⁷, make an order requiring the offender to provide, in accordance with the order, samples of any description specified in the order⁸. Where the offender has not attained the age of 17, the order must provide for the samples to be provided in the presence of an appropriate adult⁹.

If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with such an order it may impose on him a fine of an amount not exceeding level 4 on the standard scale¹⁰.

1 The Criminal Justice Act 2003 s 161 is to come into force as from a day to be appointed under s 336(3). At the date at which this volume states the law no such day had been appointed.

2 As to the determination of a person's age for these purposes see PARA 615 note 8.

3 As to the meaning of 'court' see PARA 1 note 1.

4 As to the meaning of 'community sentence' see PARA 163. As to the meaning of 'sentence' for these purposes see PARA 23 note 2.

5 As to the meaning of 'suspended sentence' see PARA 110.

6 As to the meaning of 'Class A drug' see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 770; and **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARA 239 (definition applied by the Criminal Justice Act 2003 s 161(8) (not yet in force)). For these purposes, 'specified', in relation to a Class A drug, means specified by an order made by the Secretary of State: Criminal Justice and Court Services Act 2000 s 70(1); Criminal Justice Act 2003 s 161(8) (not yet in force). The relevant order is the Criminal Justice (Specified Class A Drugs) Order 2001, SI 2001/1816.

7 Criminal Justice Act 2003 s 161(1) (not yet in force; amended by the Criminal Justice and Immigration Act 2008 Sch 4 para 78(a), Sch 28 Pt 1).

8 Criminal Justice Act 2003 s 161(2) (not yet in force). The court may not make an order under s 161(2) (not yet in force) unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn: s 161(6) (not yet in force).

9 Criminal Justice Act 2003 s 161(3) (not yet in force). For these purposes, 'appropriate adult', in relation to a person under the age of 17, means: (1) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation; (2) a social worker of a local authority; or (3) if no person falling within head (1) or head (2) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police: s 161(8) (not yet in force; amended by the Children Act 2004 s 64, Sch 5 Pt 4). As to the meaning of 'guardian' see PARA 628 note 6.

10 Criminal Justice Act 2003 s 161(4), (5) (not yet in force). As to the standard scale see PARA 142.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/630. Consideration of outstanding offences.

630. Consideration of outstanding offences.

If the defendant admits other offences outstanding against him and consents to this course¹, the judge in passing sentence may, and often does, take such offences into consideration². Offences taken into consideration have relevance to the overall criminality³. In general only offences which are similar to those in respect of which the defendant has been convicted should be taken into consideration⁴. Offences should not be taken into consideration if they are dissimilar, even where the prosecution consents, unless the judge considers it proper to do so⁵; nor should they be taken into consideration if the court would not have jurisdiction to try them⁶.

Road traffic offences which may involve disqualification or the endorsement of a driving licence ought not to be taken into consideration when passing sentence for a different class of offence⁷. Offences of a disciplinary nature committed in the armed forces ought not to be taken into consideration⁸. A sentence which the judge states takes other offences into consideration is still in law passed only for the offence with which the court is dealing, and may not therefore exceed the maximum for the offence⁹; but the judge may, if taking other offences into consideration, give a longer sentence than he would if he were dealing with the offences mentioned in the indictment¹⁰.

An offence taken into consideration does not amount to a conviction¹¹. Although the practice is not to proceed on an offence taken into consideration, the fact that an offence is taken into consideration does not operate as a bar to a further trial¹².

1 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1348.

2 See *R v Syres* (1908) 1 Cr App Rep 172, CA; *R v Shapcote (alias Heathcote)* (1909) 3 Cr App Rep 58, CCA; *R v Smith* (1921) 15 Cr App Rep 172, CCA; *R v Lloyd* (1923) 17 Cr App Rep 184, CCA; *R v Towers* (1987) 9 Cr App Rep (S) 333, [1987] Crim LR 839, CA. If the outstanding charges are not taken into consideration, they should be proceeded with as soon as possible (*R v Carter* (1922) 17 Cr App Rep 51, CCA), and not left until after release from prison (*R v Silverman* (1935) 25 Cr App Rep 101, CCA). The sentence already imposed on the defendant in respect of the earlier charge may be a ground for the mitigation of the sentence for the later one: *R v Aleron* (1909) 2 Cr App Rep 152, CCA; *R v Taylor* (1909) 2 Cr App Rep 158, CCA; *R v Markham* (1909) 2 Cr App Rep 160, CCA; and see *R v Carey*, *R v Ames* [1938] 1 All ER 515, 26 Cr App Rep 133, CCA. See also *R v MacMillan* (1921) 16 Cr App Rep 3, CCA (outstanding charges taken into consideration by the Court of Criminal Appeal, when the court of trial omitted to do so).

3 *R v Miles* [2006] EWCA Crim 256. Offences which are taken into consideration count for the purposes of compensation orders (see the Powers of Criminal Courts (Sentencing) Act 2000 s 130(1)(a); and PARAS 375-376) and confiscation orders (see the Proceeds of Crime Act 2002 s 76(3)(c); and PARA 391).

4 *R v McLean* [1911] 1 KB 332, 6 Cr App Rep 26, CCA.

5 *R v McLean* [1911] 1 KB 332, 6 Cr App Rep 26, CCA.

6 *R v Warn* [1937] 4 All ER 327, 26 Cr App Rep 115, CCA; *R v Simons*, *R v Simons* [1953] 2 All ER 599, 37 Cr App Rep 120, CCA. See also *R v Tarbotton* [1942] 1 All ER 198, 28 Cr App Rep 92, CCA (where there is a pending case of breach of recognisance in the Crown Court, a magistrates' court should obtain that court's permission to take into consideration the breach of recognisance).

7 *R v Collins* [1947] KB 560, 32 Cr App Rep 27, CCA; *R v Simons*, *R v Simons* [1953] 2 All ER 599, 37 Cr App Rep 120, CCA; and see *R v James* [1970] 3 All ER 263, [1970] 1 WLR 1304, CA.

An offence for which disqualification is mandatory may properly be taken into consideration on sentencing for a similar offence: *R v Jones* [1970] 3 All ER 815, 55 Cr App Rep 32, CA.

8 *R v Anderson* (1958) 122 JP 282, 42 Cr App Rep 91, CCA. Charges for civil offences awaiting trial by court-martial may, however, be taken into consideration: see *R v Anderson* (where the commanding officer supported the soldier-defendant's request that this course should be followed).

9 See the observations of Lord Goddard CJ in *R v Webb* [1953] 2 QB 390, 37 Cr App Rep 82, CCA. See also *R v Tremayne* (1932) 23 Cr App Rep 191, CCA; *R v Hobson* (1942) 29 Cr App Rep 30, CCA.

10 *R v Batchelor* (1952) 36 Cr App Rep 64, CCA. Sometimes offences taken into consideration add little or nothing to the sentence which the court would otherwise impose, but they may lead to a substantial increase, eg where they show a pattern of criminal activity which suggests careful and deliberate planning rather than casual involvement, or offences committed on bail: *R v Miles* [2006] EWCA Crim 256, (2006) Times, 10 April, [2006] All ER (D) 176 (Mar).

11 *R v Howard* (1990) 92 Cr App Rep 223, 12 Cr App Rep (S) 426, CA.

12 *R v Nicholson (No 2)* (1947) 32 Cr App Rep 127, CCA (disapproving *R v McMinn* (1945) 30 Cr App Rep 138, CCA); *R v Neal* [1949] 2 KB 590, 33 Cr App Rep 189, CCA; *R v Webb* [1953] 2 QB 390, 37 Cr App Rep 82, CCA. See also **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1274. A prosecution for an offence taken into consideration might amount to an abuse of process. As to abuse of process see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1225.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/631. Disparity of sentence.

631. Disparity of sentence.

When co-defendants are being sentenced for the same offence, the court should ensure that no unjustifiable disparity exists between their sentences¹. There may be objectionable disparity where co-defendants have received identical sentences notwithstanding relevant differences between them in their culpability or personal circumstances².

¹ See eg *R v Church* (1985) 7 Cr App Rep (S) 370, [1986] Crim LR 271, CA (sentence reduced because the defendant had received a more severe sentence than his co-defendant and the difference was not justified by any distinctions as to their culpability or personal circumstances); *R v Quirke* (1982) 4 Cr App Rep (S) 187, CA (sentence reduced because defendant had pleaded guilty and his co-defendant not guilty and both received identical sentences); *R v Sykes* (1980) 2 Cr App Rep (S) 173, CA (sentence reduced because defendant had a good character and co-defendant had previous convictions and both received identical sentences). As to the Court of Appeal's general approach to disparity see also *R v Pitson* (1972) 56 Cr App Rep 391, CA; *R v Potter* (15 September 1977, unreported), CA; *R v Fawcett* (1983) 5 Cr App Rep (S) 158, CA; *R v Lowe* (1989) Times, 14 November, CA; *R v Frankson* [1996] 2 Cr App Rep (S) 366, CA. Where there is disparity between sentences imposed on co-defendants, the higher sentence may be reduced on appeal where 'right-thinking members of the public, with full knowledge of all the relevant facts and circumstances, learning of this sentence [would] consider that something had gone wrong with the administration of justice': *R v Fawcett* per Lawton LJ. For the purposes of this test, 'the circumstances' include the legislative restrictions on the powers of the sentencing judge: *R v Dalby*, *R v Berry* [2005] EWCA Crim 1292, [2006] 1 Cr App Rep (S) 216, [2005] Crim LR 730. For examples of justifiable disparity see *R v McClurkin* (1979) 1 Cr App Rep (S) 67, CA; *R v Whitehead* (1995) 16 Cr App Rep (S) 395, CA; *R v Belton*, *R v Petrow* [1997] 1 Cr App Rep (S) 215, CA; *R v Bowles* [1996] 2 Cr App Rep (S) 248, CA; *R v Dalby*, *R v Berry*. See also *R v Vaughn* [2007] EWCA Crim 1629, [2007] All ER (D) 11 (Sep) (judge had erred in not taking account of a co-accused's early guilty plea).

² *R v Sykes* (1980) 2 Cr App Rep (S) 173, CA; *R v Quirke* (1982) 4 Cr App Rep (S) 187, CA. See also *R v Beard* (1992) 14 Cr App Rep (S) 302, CA. The test as to disparity is whether right thinking members of the public with a full knowledge of the relevant facts and circumstances would consider that something had gone wrong in the administration of justice: *R v Shaheen* [2007] EWCA Crim 1585, [2007] All ER (D) 46 (Sep).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/632. Personal statements of victims.

632. Personal statements of victims.

A victim of an offence may make a personal statement, detailing the effects of the offence on him, and any such statement should be taken into consideration by the court when determining sentence, but the victim's opinion as to the appropriate sentence is irrelevant and any such opinion expressed in the statement should be disregarded by the court¹.

¹ See *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 3 All ER 904, [2002] 2 Cr App Rep 533 at III.28.2, CA. See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1351.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/633. Victims' rights where offender is imprisoned or detained.

633. Victims' rights where offender is imprisoned or detained.

Where a court¹ convicts a person (the 'offender') of a sexual or violent offence², and a relevant sentence³ is imposed on him in respect of the offence then the following provisions apply⁴.

The local probation board for the area in which the sentence is imposed must take all reasonable steps to ascertain whether a person who appears to the board to be the victim of the offence or to act for the victim of the offence wishes⁵:

- 2118 (1) to make representations about whether the offender should be subject to any licence conditions or supervision requirements in the event of his release, and if so, what licence conditions or supervision requirements⁶;
- 2119 (2) to receive information about any licence conditions or supervision requirements to which the offender is to be subject in the event of his release⁷.

If a person whose wishes have been ascertained makes representations to the local probation board or provider of probation services about a matter specified in head (1) above, the relevant probation body must forward those representations to the persons responsible for determining the matter⁸.

If a local probation board has ascertained that a person wishes to receive the information specified in head (2) above, the relevant probation body must take all reasonable steps⁹:

- 2120 (a) to inform the person whether or not the offender is to be subject to any licence conditions or supervision requirements in the event of his release¹⁰;
- 2121 (b) if he is, to provide the person with details of any licence conditions or supervision requirements which relate to contact with the victim or his family¹¹; and
- 2122 (c) to provide the person with such other information as the relevant probation body considers appropriate in all the circumstances of the case¹².

Provisions also apply providing for the rights of the victim where the offender is under a hospital order with a restriction order¹³; where the offender is under a hospital direction and a limitation direction¹⁴ and where the offender is under a transfer direction and a restriction direction¹⁵.

1 As to the meaning of 'court' see PARA 340 note 8.

2 As to the meaning of 'sexual or violent offence' see PARA 340 note 1.

3 As to the meaning of 'relevant sentence' see PARA 341 note 2.

4 Domestic Violence, Crime and Victims Act 2004 s 35(1). Note that s 39 applies (instead of s 35) if a hospital direction and a limitation direction are given in relation to the offender: s 35(2); see PARA 340.

5 Domestic Violence, Crime and Victims Act 2004 s 35(3). The provider of probation services mentioned in s 35(3) is the provider or probation services identified as such by arrangements under the Offender Management Act 2007 s 3 (see PARA 741): Domestic Violence, Crime and Victims Act 2004 s 35(3A) (added by SI 2008/912).

6 Domestic Violence, Crime and Victims Act 2004 s 35(3)(a), (4).

7 Domestic Violence, Crime and Victims Act 2004 s 35(3)(b), (5).

8 Domestic Violence, Crime and Victims Act 2004 s 35(6) (amended by SI 2008/912). The relevant probation body is (1) in a case where the offender is to be supervised on release by an officer of a local probation board or an officer of a provider of probation services, that local probation board or that provider of probation services (as the case may be); (2) in any other case if the prison or other place in which the offender is detained is situated in the area of a local probation board, that local probation board and if that prison or other place is not in such an area, the provider of probation services operating in the local justice area in which the prison or other place in which the offender is detained is situated, that is identified as the relevant probation body by arrangements under the Offender Management Act 2007 s 3: Domestic Violence, Crime and Victims Act 2004 s 35(8) (substituted by SI 2008/912).

9 Domestic Violence, Crime and Victims Act 2004 s 35(7) (amended by SI 2008/912).

10 Domestic Violence, Crime and Victims Act 2004 s 35(7)(a).

11 Domestic Violence, Crime and Victims Act 2004 s 35(7)(b).

12 Domestic Violence, Crime and Victims Act 2004 s 35(7)(c) (amended by SI 2008/912).

13 See PARA 340.

14 See PARA 341.

15 See PARA 342.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(1) MATTERS TO BE TAKEN INTO ACCOUNT/634. Duty of counsel to assist the court.

634. Duty of counsel to assist the court.

The Code of Conduct of the Bar of England and Wales imposes certain duties on prosecuting counsel in relation to sentencing¹. Such duties include informing the court of any mitigating circumstances in relation to an unrepresented defendant; assisting the court, if requested, or if the court has in counsel's opinion, erred, with any statutory provisions or guidelines as to sentence; bringing to the attention of the court compensation, forfeiture and restitution matters which may arise on conviction; and drawing to the attention of the defence any assertion of material fact made in mitigation which the prosecution believes is untrue². The prosecuting counsel must not attempt by advocacy to influence the court with regard to sentencing³.

1 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2007) Written Standards for the Conduct of Professional Work para 10.8; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1224.

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2007) Written Standards for the Conduct of Professional Work para 10.8; and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1224. See also the Attorney-General's Guidelines on the Acceptance of Pleas, para C6, which requires prosecuting counsel to consider committing to writing the aggravating and mitigating factors that will form the opening of the prosecution case, and requires defence counsel to consider committing to writing the mitigating factors relied upon on behalf of the accused.

3 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2007) Written Standards for the Conduct of Professional Work para 10.8(a); and **LEGAL PROFESSIONS** vol 66 (2009) PARA 1224.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(2) THE SENTENCING GUIDELINES COUNCIL, THE SENTENCING ADVISORY PANEL AND THE SENTENCING COUNCIL FOR ENGLAND AND WALES/635. The Sentencing Guidelines Council.

(2) THE SENTENCING GUIDELINES COUNCIL, THE SENTENCING ADVISORY PANEL AND THE SENTENCING COUNCIL FOR ENGLAND AND WALES

635. The Sentencing Guidelines Council.

The Sentencing Guidelines Council was established in 2003¹ for the purpose of framing and revising sentencing guidelines² and allocation guidelines³. As from a day to be appointed the Council is abolished and the Sentencing Council for England and Wales is established in its place⁴.

1 The Sentencing Guidelines Council was established by the Criminal Justice Act 2003 s 167(1). Pursuant to the abolition of the Sentencing Guidelines Council (see the text and note 4), the Criminal Justice Act 2003 ss 167-173 (see the text and notes 2-3; and PARAS 636, 638) are repealed, as from a day to be appointed, by the Coroners and Justice Act 2009 Sch 23 Pt 4. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

The Council is obliged as soon as practicable after the end of each financial year to make an annual report to the Lord Chancellor on the exercise of the Council's functions during the year: Criminal Justice Act 2003 s 173(1) (amended by SI 2007/2128; as so prospectively repealed). 'Financial year' means a period of 12 months ending with 31 March: Criminal Justice Act 2003 s 173(5) (as so prospectively repealed). A copy of the report must be laid before each House of Parliament (s 173(3) (as so prospectively repealed)) and the report must be published after being so laid (s 173(4) (as so prospectively repealed)). Provision is made as to the composition and membership of the Council: see ss 167(1)-(10), 168(1), (1A), (1B), (3)-(7) (s 167(1)(b) amended, ss 167(10), 168(1A), (1B), (6) added, s 168(1)(b), (c) substituted, by the Constitutional Reform Act 2005 Sch 4 paras 357, 358; Criminal Justice Act 2003 ss 167(1), (4), (6), 168(1)(c) amended by SI 2007/2178; as so prospectively repealed); and the Sentencing Guidelines Council (Supplementary Provisions) Order 2004, SI 2004/246 (amended by SI 2006/680).

2 'Sentencing guidelines' means guidelines relating to the sentencing of offenders, which may be general in nature or limited to a particular category of offence or offender: Criminal Justice Act 2003 s 170(1)(a) (prospectively repealed: see note 1). Sentencing guidelines in respect of an offence or category of offences must include criteria for determining the seriousness of the offence or offences, including (where appropriate) criteria for determining the weight to be given to any previous convictions of offenders: s 170(7) (as so prospectively repealed).

3 'Allocation guidelines' means guidelines relating to decisions by a magistrates' court under the Magistrates' Courts Act 1980 s 19 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1105, 1111) as to whether an offence is more suitable for summary trial or trial on indictment: Criminal Justice Act 2003 s 170(1)(b) (prospectively repealed: see note 1).

4 See the Coroners and Justice Act 2009 s 135(a); and PARAS 637, 655-658.

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636. The Sentencing Advisory Panel.

The Sentencing Advisory Panel was established in 1988 to advise the Court of Appeal on sentencing guidelines¹, and was reconstituted (without that function) in 2003². As from a day to be appointed the Panel is abolished and the Sentencing Council for England and Wales is established in its place³.

1 le under the Crime and Disorder Act 1998 s 81 (repealed).

2 See the Criminal Justice Act 2003 s 169(1). Pursuant to the abolition of the Sentencing Advisory Panel the Criminal Justice Act 2003 ss 167-173 (see further PARAS 635, 638) are repealed, as from a day to be appointed, by the Coroners and Justice Act 2009 Sch 23 Pt 4. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

Provision is made for the constitution and membership of the Panel: see the Criminal Justice Act 2003 s 169(2), (3) (as so prospectively repealed).

3 See the Coroners and Justice Act 2009 s 135(b); and PARAS 637, 655-658. At the date at which this volume states the law, no day had been appointed for the commencement of this provision.

UPDATE

636 The Sentencing Advisory Panel

NOTE 1--Until definitive guidelines are issued by the Sentencing Guidelines Council, proposals by the Sentencing Advisory Panel do not constitute guidelines or serve to displace or amend, or in any other way undermine, the authority of sentencing guidelines of the Court of Appeal: *R v Valentas* [2010] EWCA Crim 200, [2010] All ER (D) 77 (Feb).

NOTE 3--Coroners and Justice Act 2009 s 135 in force on 6 April 2010: SI 2010/816.

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637. The Sentencing Council for England and Wales.

As from a day to be appointed¹ the Sentencing Guidelines Council² and the Sentencing Advisory Panel³ are abolished⁴ and the Sentencing Council for England and Wales ('the Council') is established in their place⁵. The principal function of the Council is to prepare, revise and publish sentencing guidelines⁶ and allocation guidelines⁷ which the court is required to observe⁸. The Council must also publish a resource assessment in respect of the draft or definitive guidelines it publishes⁹, monitor the operation and effect of its sentencing guidelines¹⁰, publish information relating to sentencing practice¹¹, and may promote awareness of matters relating to the sentencing of offenders by courts in England and Wales¹². The Lord Chancellor may also refer relevant government proposals to the Council¹³, and the Council must make an annual report to the Lord Chancellor¹⁴.

1 At the date at which this volume states the law no date had been appointed for the coming into force of the Coroners and Justice Act 2009 Pt 4 Ch 1 (ss 118-136), which makes provision for the establishment and operation of the Sentencing Council for England and Wales (see the text and notes 5-14; and PARAS 655-658).

2 See PARA 635.

3 See PARA 636.

4 Coroners and Justice Act 2009 s 135 (not yet in force).

5 Coroners and Justice Act 2009 s 118(1) (not yet in force). Provision is made for the constitution and membership: see s 118(2), Sch 15 (not yet in force).

6 See the Coroners and Justice Act 2009 ss 120, 121, 123, 124; and PARAS 655-656. The Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions: s 133 (not yet in force).

7 See the Coroners and Justice Act 2009 ss 122-124; and PARA 657. See note 6.

8 See the Coroners and Justice Act 2009 ss 125-126; and PARA 658.

9 Coroners and Justice Act 2009 s 127(2) (not yet in force). Resource assessments are required to be published where the Council publishes draft guidelines under the Coroners and Justice Act 2009 s 120 or s 122 (see PARAS 655, 657) (s 127(1)(a) (not yet in force)), or issues guidelines as definitive guidelines under s 120 or s 122 (s 127(1)(b) (not yet in force)). A resource assessment in respect of any guidelines is an assessment by the Council of the likely effect of the guidelines on the resources required for the provision of prison places, the resources required for probation provision and the resources required for the provision of youth justice services: s 127(3) (not yet in force). The resource assessment must be published: (1) in a case within s 127(1)(a), at the time of publication of the draft guidelines (s 127(4)(a) (not yet in force)); and (2) in a case within s 127(1)(b), at the time the guidelines are issued or, where the guidelines are issued by virtue of s 123 (see PARAS 655, 657), as soon as reasonably practicable after the guidelines are issued (s 127(4)(b) (not yet in force)). The Council must keep under review any resource assessment published under s 127 and, if the assessment is found to be inaccurate in a material respect, publish a revised resource assessment: s 127(5) (not yet in force).

10 Coroners and Justice Act 2009 s 128(1)(a) (not yet in force). The Council is also required to consider what conclusions can be drawn from the information obtained by virtue of such monitoring: s 128(1)(b) (not yet in force). The Council must, in particular, discharge its monitoring duty (ie its duty under s 128(1)(a)) with a view to drawing conclusions about the frequency with which, and extent to which, courts depart from sentencing guidelines, the factors which influence the sentences imposed by courts, the effect of the guidelines on the promotion of consistency in sentencing and the effect of the guidelines on the promotion of public confidence in the criminal justice system: s 128(2) (not yet in force). The Council must report on the exercise of these functions in its annual report: see s 128(3); and note 14. 'Sentence', in relation to an offence, includes any order

made by a court when dealing with the offender in respect of the offender's offence, and 'sentencing' is to be construed accordingly: s 136 (not yet in force).

11 Coroners and Justice Act 2009 s 129(1) (not yet in force), which requires the Council to publish, at such intervals as it considers appropriate: (1) in relation to each local justice area, information regarding the sentencing practice of the magistrates' courts acting in that area (s 129(1)(a) (not yet in force)); and (2) in relation to each location at which the Crown Court sits, information regarding the sentencing practice of the Crown Court when it sits at that location (s 129(1)(b) (not yet in force)).

12 Coroners and Justice Act 2009 s 129(2) (not yet in force). Matters which the Council may promote include, in particular, the sentences imposed by courts in England and Wales, the cost of different sentences and their relative effectiveness in preventing re-offending and the operation and effect of guidelines under Pt 4 Ch 1: s 129(2) (not yet in force). For these purposes the Council may, in particular, publish any information obtained or produced by it in connection with its functions under 128(1) (see note 7): s 129(3) (not yet in force).

13 Where the Lord Chancellor refers to the Council any government policy proposal (including a policy proposal of the Welsh Ministers), or government proposal for legislation (including a proposal of the Welsh Ministers for legislation), which the Lord Chancellor considers may have a significant effect on the resources required for the provision of prison places, the resources required for probation provision or the resources required for the provision of youth justice services, the Council must assess the likely effect of the proposal on the matters such matters: Coroners and Justice Act 2009 s 132(1)-(3) (not yet in force). The Council must prepare a report of the assessment (a single report may be prepared of the assessments relating to two or more proposals) and send it to the Lord Chancellor and, if it relates to a proposal of the Welsh Ministers, to the Welsh Ministers: s 132(4), (5) (not yet in force). If the Lord Chancellor receives such a report he must, unless it relates only to a proposal of the Welsh Ministers, lay a copy of it before each House of Parliament; if the Welsh Ministers receive such a report they must lay a copy of it before the National Assembly for Wales (s 132(6), (7) (not yet in force)), and the Council must publish a report which has been so laid (s 132(8) (not yet in force)).

For these purposes 'legislation' means an Act of Parliament if, or to the extent that, it extends to England and Wales, subordinate legislation made under an Act of Parliament if, or to the extent that, the subordinate legislation extends to England and Wales, and a Measure or Act of the National Assembly for Wales or subordinate legislation made under such a Measure or Act (s 132(9) (not yet in force)); 'prison' includes any youth detention accommodation within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 s 107(1) (detention and training orders: see PARA 91) but does not include any naval, military or air force prison; 'probation provision' has the meaning given by the Offender Management Act 2007 s 2 (see PARA 740); and 'youth justice services' has the meaning given by the Crime and Disorder Act 1998 s 38(4) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1702) (Coroners and Justice Act 2009 s 136 (not yet in force)).

14 The Council must, as soon as practicable after the end of each financial year, make to the Lord Chancellor a report on the exercise of the Council's functions during the year: Coroners and Justice Act 2009 s 119(1) (not yet in force). The Lord Chancellor must lay a copy of the report before Parliament (s 119(2) (not yet in force)) and the Council must publish the report once a copy has been so laid (s 119(3) (not yet in force)). When reporting on the exercise of its functions under s 128 (see note 7) in its annual report for a financial year, the Council must include a summary of the information obtained under s 128(1)(a) and a report of any conclusions drawn by the Council under s 128(1)(b): ss 119(4), 128(3) (not yet in force).

The annual report for a financial year must contain a sentencing factors report, which is an assessment made by the Council, using the information available to it, of the effect which any changes in the sentencing practice of courts are having or are likely to have on the resources required for the provision of prison places, the resources required for probation provision and the resources required for the provision of youth justice services (s 130 (not yet in force)) and a non-sentencing factors report, which is a report by the Council of any significant quantitative effect (or any significant change in quantitative effect) which non-sentencing factors are having or are likely to have on the resources needed or available for giving effect to sentences imposed by courts in England and Wales (s 131(1), (3) (not yet in force)). 'Non-sentencing factors' are factors which do not relate to the sentencing practice of the courts, and include the recalling of persons to prison, breaches of community orders (within the meaning of the Criminal Justice Act 2003 s 177: see PARAS 163, 168 et seq), suspended sentence orders (within the meaning of s 189(7): see PARA 110 et seq), and youth rehabilitation orders (within the meaning of the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8): see PARAS 163, 202 et seq), patterns of re-offending, decisions or recommendations for release made by the Parole Board, the early release under discretionary powers of persons detained in prison, and the remanding of persons in custody: Coroners and Justice Act 2009 s 131(4), (5) (not yet in force).

The Council may, at any other time, provide the Lord Chancellor with a non-sentencing factors report, and may publish that report: s 131(2) (not yet in force).

'Financial year' means a period of 12 months ending with 31 March: s 136 (not yet in force). If s 118 comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which s 118 comes into force and ending with the end of the next financial year: s 119(5) (not yet in force).

UPDATE

637 The Sentencing Council for England and Wales

NOTES 4, 5, 14--Coroners and Justice Act 2009 ss 118, 119, 135, Sch 15 in force on 6 April 2010: SI 2010/816.

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(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL

(i) In general

638. Power to establish guidelines.

Until a day to be appointed¹ the Secretary of State may at any time propose to the Sentencing Guidelines Council that sentencing guidelines² be framed or revised by the Council in respect of offences or offenders of a particular category³ or in respect of a particular matter affecting sentencing⁴, or that allocation guidelines⁵ be framed or revised by the Council⁶. The Council may from time to time consider whether to frame sentencing or allocation guidelines and, if it receives a proposal from either the Sentencing Advisory Panel⁷ or the Secretary of State⁸, must consider whether to do so. Where sentencing or allocation guidelines have been issued by the Council as definitive guidelines⁹, the Council must from time to time (and, in particular, if it receives a proposal from the Panel¹⁰ or from the Secretary of State¹¹) consider whether to revise them¹².

Where the Council decides to frame or revise sentencing guidelines, the matters to which it must have regard include:

- 2123 (1) the need to promote consistency in sentencing¹³;
- 2124 (2) the sentences imposed by courts in England and Wales for offences to which the guidelines relate¹⁴;
- 2125 (3) the cost of different sentences and their relative effectiveness in preventing re-offending¹⁵;
- 2126 (4) the need to promote public confidence in the criminal justice system¹⁶; and
- 2127 (5) the views communicated¹⁷ to the Council by the Panel¹⁸.

Where the Council decides to frame or revise allocation guidelines, the matters to which it must have regard include the need to promote consistency in allocation decisions¹⁹ and the views communicated²⁰ to the Council by the Panel²¹.

Where the Council has prepared or revised any sentencing or allocation guidelines, it must publish them as draft guidelines²² and must consult about the draft guidelines the Secretary of State²³, such persons as the Lord Chancellor may direct²⁴, and such other persons as the Council considers appropriate²⁵. The Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines²⁶.

Where the Council decides to frame or revise any sentencing or allocation guidelines, otherwise than in response to a proposal from the Panel²⁷, the Council must notify the Panel²⁸. Where the Panel receives such a notification or makes a proposal²⁹ that the sentencing or allocation guidelines be framed or revised by the Council, the Panel must obtain and consider the views on the matters in issue of such persons or bodies as may be determined, after consultation with the Lord Chancellor, by the Council³⁰, and formulate its own views on those matters and communicate them to the Council³¹.

Every court must:

- 2128 (a) in sentencing an offender, have regard to any definitive sentencing guidelines issued³² by the Council, as revised by subsequent definitive guidelines, which are relevant to the offender's case³³; and
- 2129 (b) in exercising any other function relating to the sentencing of offenders, have regard to any such guidelines which are relevant to the exercise of the function³⁴.

1 Pursuant to the abolition of the Sentencing Guidelines Council and the Sentencing Advisory Panel and their replacement by the Sentencing Council for England and Wales (see PARAS 635, 637) the Criminal Justice Act 2003 ss 167-173 (see the text and notes 2-34; and PARAS 635, 636) are repealed, as from a day to be appointed, by the Coroners and Justice Act 2009 Sch 23 Pt 4. At the date at which this volume states the law no day had been appointed for the coming into force of this repeal.

2 As to the meaning of 'sentencing guidelines' see PARA 635 note 2. The Secretary of State or the Lord Chancellor may by order under the Coroners and Justice Act 2009 s 177(3) provide for sentencing or allocation guidelines issued as definitive guidelines under the Criminal Justice Act 2003 s 170 (see the text and notes 3-36) which have effect immediately before the coming into force of the Coroners and Justice Act 2009 s 125(1) (see PARA 638) to be treated as guidelines issued by the Sentencing Council for England and Wales: see Sch 22 para 28(1)(b), (2); and PARA 638 note 5.

3 Criminal Justice Act 2003 s 170(2)(a)(i) (prospectively repealed: see note 1).

4 Criminal Justice Act 2003 s 170(2)(a)(ii) (prospectively repealed: see note 1).

5 As to the meaning of 'allocation guidelines' see PARA 635 note 3.

6 Criminal Justice Act 2003 s 170(2)(b) (prospectively repealed: see note 1).

7 Criminal Justice Act 2003 s 170(3)(a) (prospectively repealed: see note 1). Such proposals are made under s 171(2) (see note 27).

8 Criminal Justice Act 2003 s 170(3)(b) (prospectively repealed: see note 1). As to the Sentencing Advisory Panel see PARA 636; and note 1. Such proposals are made under s 170(2).

9 See the Criminal Justice Act 2003 s 170(9); and the text and note 27.

10 *le* under the Criminal Justice Act 2003 s 171(2) (see note 27).

11 *le* under the Criminal Justice Act 2003 s 170(2).

12 Criminal Justice Act 2003 s 170(4) (prospectively repealed: see note 1).

13 Criminal Justice Act 2003 s 170(5)(a) (prospectively repealed: see note 1).

14 Criminal Justice Act 2003 s 170(5)(b) (prospectively repealed: see note 1). As to the meaning of 'court' see PARA 1 note 1.

15 Criminal Justice Act 2003 s 170(5)(c) (prospectively repealed: see note 1).

16 Criminal Justice Act 2003 s 170(5)(d) (prospectively repealed: see note 1).

17 *le* communicated in accordance with the Criminal Justice Act 2003 s 171(3)(b) (see the text and note 31).

18 Criminal Justice Act 2003 s 170(5)(e) (prospectively repealed: see note 1).

19 Criminal Justice Act 2003 s 170(6)(a) (prospectively repealed: see note 1). 'Allocation decisions' are decisions under the Magistrates' Courts Act 1980 s 19 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 659).

20 *le* communicated in accordance with the Criminal Justice Act 2003 s 171(3)(b) (see the text and note 31).

21 Criminal Justice Act 2003 s 170(6)(b) (prospectively repealed: see note 1).

22 Criminal Justice Act 2003 s 170(8)(a) (prospectively repealed: see note 1).

23 Criminal Justice Act 2003 s 170(8)(b)(i) (prospectively repealed: see note 1).

24 Criminal Justice Act 2003 s 170(8)(b)(ii) (amended by SI 2007/2128; prospectively repealed (see note 1)).

25 Criminal Justice Act 2003 s 170(8)(b)(iii) (prospectively repealed: see note 1).

26 Criminal Justice Act 2003 s 170(9) (prospectively repealed: see note 1). The following guidelines have been issued and are referred to in this work:

- 950 (1) the Sentencing Guidelines Council Guideline on *Robbery* (2006) (see PARA 653);
- 951 (2) the Sentencing Guidelines Council Guideline *Overarching Principles: Seriousness* (2004) (see PARAS 618-619);
- 952 (3) the Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003* (2004) (see PARA 639);
- 953 (4) the Sentencing Guidelines Council Guideline *Reduction in Sentence for a Guilty Plea* (Revised 2007) (see PARAS 623-624);
- 954 (5) the Sentencing Guidelines Council Guideline *on Attempted Murder* (2009) (see PARA 640);
- 955 (6) the Sentencing Guidelines Council Guideline on *Theft and Burglary in a Building other than a Dwelling* (2008) (see PARA 641);
- 956 (7) the Sentencing Guidelines Council Guideline on *Breach of an Anti-Social Behaviour Order* (2008) (see PARA 642);
- 957 (8) the Sentencing Guidelines Council Guideline *Magistrates' Court Sentencing Guidelines* (2008) (see PARA 644);
- 958 (9) the Sentencing Guidelines Council Guideline *Assault and Other Offences Against the Person* (2008) (see PARA 645);
- 959 (10) the Sentencing Guidelines Council Guideline *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) (see PARAS 646, 647);
- 960 (11) the Sentencing Guidelines Council Guideline *Fail to Surrender to Bail* (2007) (see PARA 648);
- 961 (12) the Sentencing Guidelines Council Guideline *Sexual Offences Act 2003* (2007) (see PARA 649);
- 962 (13) the Sentencing Guidelines Council Guideline *Breach of a Protective Order* (2006) (see PARA 650);
- 963 (14) the Sentencing Guidelines Council Guideline *Overarching Principles: Domestic Violence* (2006) (see PARA 651);
- 964 (15) the Sentencing Guidelines Council Guideline *Manslaughter by Reason of Provocation* (2005) (see PARA 652); and
- 965 (16) the Sentencing Guidelines Council Guideline on *Causing Death by Dangerous Driving* (2008).

27 The Panel may at any time propose to the Council: (1) that sentencing guidelines be framed or revised by the Council either in respect of offences or offenders of a particular category (Criminal Justice Act 2003 s 171(2)(a)(i) (prospectively repealed: see note 1)) or in respect of a particular matter affecting sentencing (s 171(2)(a)(ii) (as so prospectively repealed)); or (2) that allocation guidelines be framed or revised by the Council (s 171(2)(b) (as so prospectively repealed)).

28 Criminal Justice Act 2003 s 171(1) (prospectively repealed: see note 1).

29 le under the Criminal Justice Act 2003 s 171(2) (see note 27).

30 Criminal Justice Act 2003 s 171(3)(a) (amended by SI 2007/2128; prospectively repealed (see note 1)). This does not apply where the Council notifies the Panel of the Council's view that the urgency of the case makes it impracticable for the Panel to comply with it: Criminal Justice Act 2003 s 171(4) (as so prospectively repealed).

31 Criminal Justice Act 2003 s 171(3)(b) (prospectively repealed: see note 1).

32 le issued under the Criminal Justice Act 2003 s 170(9) (see the text and note 26).

33 Criminal Justice Act 2003 s 172(1)(a), (2) (prospectively repealed: see note 1). This does not necessarily mean that such guidelines have to be followed: they are guidelines, no more nor less; however, a judge who decides not to apply such a guideline must explain why he is not doing so: *R v Oosthuizen* [2005] EWCA Crim 1978, [2006] 1 Cr App Rep (S) 285, [2005] Crim LR 979; *R v Bowering* [2005] EWCA Crim 3215, [2006] Crim LR 361. The judge can choose whether or not to apply a guideline depending on whether it is appropriate to do so or not; if the guidelines are not followed, an explanation should be given: *A-G's References (Nos 31, 45, 43, 42, 50 and 51 of 2003)* [2004] EWCA Crim 1934, [2005] Cr App Rep (S) 377. See also *R v Whittle* [2007] EWCA Crim 539, [2007] 2 Cr App Rep (S) 578, [2007] Crim LR 499; *R v Hurley* [2008] EWCA Crim 2620, [2009] 1 Cr App Rep (S) 568, [2008] All ER (D) 84 (Sep).

34 Criminal Justice Act 2003 s 172(1)(b) (prospectively repealed: see note 1).

UPDATE

638 Power to establish guidelines

NOTE 26--Also head (17) the Sentencing Guidelines Council Guideline on *Corporate Manslaughter and Health and Safety Offences Causing Death* (2010), which applies to the sentencing of companies and organisations that cause death through a gross breach of a duty of care or where breach of health and safety requirements is a significant cause of a death. The elements of the relevant offences and the factors likely to affect seriousness are set out: see *Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pts A (paras 1-4), B (paras 5-11). Principles concerning the assessment of fines and the financial information that the court should consider are also provided: *Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pt C (paras 12-21, Annex A). Fines must be punitive and sufficient to have an impact on the defendant, with the appropriate fines seldom being less than £500,000 for corporate manslaughter and £100,000 for health and safety offences: *Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pt D (paras 22-26). Additional sentencing powers available to the court are the award of compensation (*Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pt E (paras 27, 28)), publicity orders (*Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pt G (paras 30-32)), and remedial orders (*Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pt H (paras 33-36)). The defendant ought ordinarily (subject to means) be ordered to pay the properly incurred costs of the prosecution: *Corporate Manslaughter and Health and Safety Offences Causing Death* (2010) Pt F (para 29).

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639. Sentences under the Criminal Justice Act 2003; youth offenders.

In addition to the guidelines relating to particular offences¹, there are some guidelines of more general application.

The Sentencing Guidelines Council Guideline *New Sentences: Criminal Justice Act 2003*² relates to the sentencing framework introduced by the Criminal Justice Act 2003 which affects the nature of community and custodial sentences³ and was designed to ensure a consistent approach when the provisions creating those sentences came into force⁴. The guideline covers the following areas:

- 2130 (1) the community sentence⁵;
- 2131 (2) deferred sentences⁶;
- 2132 (3) custodial sentences of 12 months or more⁷;
- 2133 (4) suspended sentences⁸; and
- 2134 (5) intermittent custody⁹.

The Sentencing Guidelines Council Guideline *Overarching Principles: Sentencing Youths*¹⁰ sets out guidance for the sentencing of youths. In addition to dealing with the general approach¹¹, the guideline also gives guidance in relation to referral orders¹², financial orders¹³, youth rehabilitation orders¹⁴, and custodial sentences¹⁵. The guideline also deals with the trial and sentencing of cases in the Crown Court¹⁶.

1 See PARAS 640-654.

2 *Ie the Sentencing Guidelines Council Guideline New Sentences: Criminal Justice Act 2003* (2004).

3 See *New Sentences: Criminal Justice Act 2003* (2004), foreword. The Guideline only applies to sentences and related provisions which were expected to come into force by April 2005: see *New Sentences: Criminal Justice Act 2003* (2004), foreword.

4 See *New Sentences: Criminal Justice Act 2003* (2004), foreword.

5 See *New Sentences: Criminal Justice Act 2003* (2004), Section 1, Pt 1.

6 See *New Sentences: Criminal Justice Act 2003* (2004), Section 1, Pt 2.

7 See *New Sentences: Criminal Justice Act 2003* (2004), Section 2, Pt 1.

8 See *New Sentences: Criminal Justice Act 2003* (2004), Section 2, Pt 2.

9 See *New Sentences: Criminal Justice Act 2003* (2004), Section 2, Pt 3.

10 *Ie the Sentencing Guidelines Council Guideline Overarching Principles: Sentencing Youths* (2009). These guidelines relate to the sentencing of offenders on or after 30 November 2009: see *Overarching Principles: Sentencing Youths* (2009), foreword.

11 See *Overarching Principles: Sentencing Youths* (2009) Pts 1-7.

12 See *Overarching Principles: Sentencing Youths* (2009) Pt 8.

13 See *Overarching Principles: Sentencing Youths* (2009) Pt 9.

14 See *Overarching Principles: Sentencing Youths* (2009) Pt 10.

15 See *Overarching Principles: Sentencing Youths* (2009) Pt 11.

16 See *Overarching Principles: Sentencing Youths* (2009) Pt 12.

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(ii) Guidelines relating to Particular Offences

640. Attempted murder.

The Sentencing Guidelines Council Guideline on Attempted Murder applies to attempted murder by offenders aged 18 and older¹. Attempted murder is an offence for which the court may need to consider imposing a discretionary life sentence or one of the sentences for public protection². The starting point and ranges are based on a first time adult offender convicted after trial and are relevant when imposing a determinate sentence and when fixing any minimum term necessary³. The culpability of the offender is the initial factor in determining the seriousness of the offence⁴. Where the degree of harm actually caused to the victim of an attempted murder is negligible this will impact on the overall assessment of the seriousness of the offence⁵, however, as harm also includes any harm the offence was intended to cause or might foreseeably cause, an offence of attempted murder will always involve, in principle, the most serious level of harm⁶. The most serious offences of attempted murder include those which encompass the factors⁷ that, had the offence been murder, would make the seriousness of the offence exceptionally high or particularly high⁸. The particular facts of the offence identify the appropriate level⁹. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offences for which the sentence is being imposed which acts as a starting point from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence to reach a provisional sentence¹⁰.

A court must consider making a compensation order in respect of any personal injury, loss or damage occasioned¹¹.

1 Ie the Sentencing Guidelines Council Guideline *on Attempted Murder* (2009). The Guideline applies to the sentencing of offenders convicted of attempted murder on or after 27 July 2009: see *Attempted Murder* (2009) foreword.

2 See *Attempted Murder* (2009) para 1. The sentences for public protection referred to in the text are the ones prescribed in the Criminal Justice Act 2003 (see ss 224-230; and PARA 73 et seq).

3 See *Attempted Murder* (2009) Pt D para 2.

4 *Attempted Murder* (2009) Pt A para 1. It is an essential element of attempted murder that the offender had an intention to kill; accordingly an offender convicted of this offence will have demonstrated a high level of culpability, however the precise level may vary in line with the circumstances of the offence (ie the use of a weapon): see *Attempted Murder* (2009) Pt A para 3. The guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy: *Attempted Murder* (2009) Pt A para 10. When assessing the seriousness of the offence the court must also refer to the list of aggravating and mitigating factors in the Sentencing Guidelines Council Guideline *Overarching Principles: Seriousness* (2004) (see PARA 618).

5 See *Attempted Murder* (2009) Pt A para 5.

6 See *Attempted Murder* (2009) Pt A para 6.

7 Ie the factors set out in the Criminal Justice Act 2003 Sch 21 paras 4, 5 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90).

8 See *Attempted Murder* (2009) Pt A para 7.

9 See *Attempted Murder* (2009) Pt A para 8. In all cases the aggravating and mitigating factors that influence the range follow those set out in the Criminal Justice Act 2003 Sch 21 with suitable adjustments: see *Attempted Murder* (2009) Pt A(8), Pt D para 7.

10 See *Attempted Murder* (2009) Pt C para 14. See further *Attempted Murder* (2009) Pt C paras 15-19.

11 See *Attempted Murder* (2009) Pt B para 11. There is no limit to the amount of compensation that may be awarded in the Crown Court: *Attempted Murder* (2009) Pt B para 11.

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641. Theft and burglary in a building other than a dwelling.

The Sentencing Guidelines Council Guideline on theft and burglary in a building other than a dwelling¹ applies to the following offences committed by offenders aged 18 or over²: theft in breach of trust, theft from the person, theft from a shop and burglary in a building other than a dwelling³. The starting points and sentencing ranges are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means⁴. To avoid double counting, such motivation should not be treated as a factor that increases culpability⁵. When assessing the harm caused the starting point should be the loss suffered by the victim and the court should also take into account any harm done to persons other than the direct victim and any harm in the form of public concern or erosion of public confidence⁶.

The most common factors that are likely to aggravate an offence of theft or burglary in a building other than a dwelling are factors⁷ indicating higher culpability and factors⁸ indicating a more than usually serious degree of harm⁹.

The return of stolen property by the offender may act as a mitigating factor¹⁰. In exceptional circumstances an offence committed in desperation or need arising from particular hardship may count as personal mitigation¹¹. If the offender has an addiction this may influence the type of sentence imposed¹².

The following ancillary orders may be made¹³:

- 2135 (1) restitution order¹⁴;
- 2136 (2) compensation order¹⁵;
- 2137 (3) confiscation order¹⁶;
- 2138 (4) deprivation order¹⁷.

1 The Sentencing Guidelines Council Guideline *Theft and Burglary in a Building other than a Dwelling* (2008). As to the relevant statutory provision see the Theft Act 1968 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282. Burglary in a dwelling is the subject of a guideline judgment from the Court of Appeal: *Theft and Burglary in a Building other than a Dwelling* (2008) foreword. As to Court of Appeal guidelines see PARA 659.

2 *Theft and Burglary in a Building other than a Dwelling* (2008) foreword. The guideline applies to the sentencing of offenders convicted of theft or burglary in a building other than a dwelling who are sentenced on or after 5 January 2009: *Theft and Burglary in a Building other than a Dwelling* (2008) foreword.

3 *Theft and Burglary in a Building other than a Dwelling* (2008) Pt A para 1. As to the factors to be taken into consideration in respect of each type of offence see *Theft and Burglary in a Building other than a Dwelling* (2008) Pt E.

4 *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 8. The guideline sets out the decision making process for sentencing for the offences of theft and burglary in a building other than a dwelling.

5 *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 8. As to culpability see further *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B paras 6, 7.

6 See *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 9. Such harm may be greater than that intended by the offender: see *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 10.

7 le the planning of an offence, the offenders were operating in groups and there was a deliberate targeting of vulnerable victims. Where an offence of theft is motivated by an intention to cause harm, or out of revenge, this will aggravate the offence: *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 8.

8 le the victim is particularly vulnerable, there was a high level of gain from the offence and there was a high value (including sentimental value) of property to the victim or substantial consequential loss.

9 *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 12.

10 *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 15.

11 *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 17.

12 See *Theft and Burglary in a Building other than a Dwelling* (2008) Pt B para 16. In particular it may be appropriate to impose: a drug rehabilitation requirement (see PARA 279), an alcohol treatment requirement (see PARA 281) or an activity or supervision requirement including alcohol specific advice and support (see PARAS 272, 282).

13 See *Theft and Burglary in a Building other than a Dwelling* (2008) Pt C paras 18-30.

14 le an order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 148: see PARA 388.

15 le an order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 130: see PARA 375.

16 le an order made under the Proceeds of Crime Act 2002: see PARA 391 et seq.

17 le an order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 143: see PARA 481.

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642. Breach of an Anti-Social Behaviour Order.

The Sentencing Guidelines Council Guideline Breach of an Anti-Social Behaviour Order¹ applies to the sentencing of both adult and young offenders². However the guidance for young offenders is provided in the form of principles particularly regarding the circumstances in which a custodial sentence might be justified³.

The main aim of sentencing for breach of an anti-social behaviour order should primarily aim to reflect the harassment, alarm or distress involved with the fact that it constituted a breach of a court order being a secondary consideration⁴.

When considering the seriousness of breach of such an order the court needs to consider the degree to which the offender intended to breach the order and the degree to which the offender intended to cause the harm that resulted (or could have resulted)⁵. The original conduct that led to the making of the order and any offence resulting from the breach are also relevant considerations⁶. Breach of an interim order or a final order is equally serious and the same approach to sentencing should be taken⁷.

Sentence may be mitigated where the offender has a lower level of understanding due to mental health issues or learning difficulties; the offender was acting under the influence of an older or more experienced offender; or there has been compliance with an individual support order⁸ or intervention order⁹ imposed when the anti-social behaviour order was made¹⁰.

1 As to anti-social behaviour orders made on conviction see PARAS 304-311; as to anti-social behaviour orders made otherwise than on conviction see PARAS 496-505.

2 Sentencing Guidelines Council Guideline *Breach of an Anti-Social Behaviour Order* (2008) foreword, Pt B para 5. The guideline applies to the sentencing of offenders convicted of breaching an anti-social behaviour order who are sentenced on or after 5 January 2009: *Breach of an Anti-Social Behaviour Order* (2008) foreword.

3 See *Breach of an Anti-Social Behaviour Order* (2008) Pt B para 5, Pt E.

4 See *Breach of an Anti-Social Behaviour Order* (2008) Pt B para 6.

5 See *Breach of an Anti-Social Behaviour Order* (2008) Pt B paras 11-13.

6 See *Breach of an Anti-Social Behaviour Order* (2008) Pt B paras 15-17, 22-23.

7 *Breach of an Anti-Social Behaviour Order* (2008) Pt B para 18.

8 As to individual support orders see PARA 309 et seq.

9 As to intervention orders see PARA 499 et seq.

10 *Breach of an Anti-Social Behaviour Order* (2008) Pt B para 25.

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643. Causing death by driving.

The Sentencing Guidelines Council Guideline on causing death by driving¹ applies to the sentencing of causing death by dangerous driving², causing death by driving under the influence of alcohol or drugs³, causing death by careless driving⁴ and causing death by driving when driving as an unlicensed, disqualified or uninsured driver⁵. The guideline provides for five factors⁶ that may be regarded as determinants of offence seriousness and gives examples of each⁷. The seriousness of the offence will generally be greater where more than one person is killed⁸.

Factors that may be included in mitigation are where the offender has suffered very serious injuries⁹; where one or more of the victims was in a close personal or family relationship with the offender¹⁰; where the actions of the victim or a third party contributed to the commission of the offence¹¹; and the offender's lack of driving experience¹². Evidence that an offender is normally a careful and conscientious driver, giving direct, positive assistance to a victim and genuine remorse may be taken into account as personal mitigation and may justify a reduction in sentence¹³.

For each offence disqualification is a mandatory part of the sentence¹⁴. Furthermore the court may be able to make a deprivation order¹⁵ in respect of a vehicle used to commit such an offence¹⁶.

1 Ie the Sentencing Guidelines Council Guideline *Causing Death by Driving* (2008). The guideline applies to the sentencing of offenders convicted on or after 4 August 2008; *Causing Death by Driving* (2008) foreword. As to the previous Court of Appeal guidelines see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1056.

2 As to causing death by dangerous driving see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 963 et seq.

3 As to causing death by driving under the influence of alcohol or drugs see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 974.

4 As to causing death by careless driving see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 970.

5 *Causing Death by Driving* (2008) introduction. As to causing death by driving when driving as an unlicensed, disqualified or uninsured driver see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1017.

6 Ie awareness of risk; effect of alcohol or drugs; inappropriate speed of vehicle; seriously culpable behaviour of offender; and victim (ie vulnerable road users).

7 See *Causing Death by Driving* (2008) Pt A para 8.

8 See *Causing Death by Driving* (2008) Pt A paras 19-21.

9 See *Causing Death by Driving* (2008) Pt A para 22.

10 See *Causing Death by Driving* (2008) Pt A para 23.

11 See *Causing Death by Driving* (2008) Pt A para 24.

12 See *Causing Death by Driving* (2008) Pt A para 25.

13 See *Causing Death by Driving* (2008) Pt A paras 26-29.

14 See *Causing Death by Driving* (2008) Pt B para 30. An order may be made continuing the disqualification until the offender passes an extended driving test: see the Road Traffic Offenders Act 1988 s 36(1); and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1071.

15 le an order made under the Powers of Criminal Courts (Sentencing) Act 2000 s 143 (see PARA 481).

16 See *Causing Death by Driving* (2008) Pt B para 32.

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644. Magistrates' courts sentencing guidelines.

The Magistrates' Court Sentencing Guidelines¹ cover most of the offences regularly coming before a magistrates' court which require decisions on allocation or on sentence². The guidelines set out examples of the nature of activity which may constitute the offence, progressing from less to more serious conduct, and provide a starting point based on a first time offender pleading not guilty³. The guidelines also specify a sentencing range for each example of activity⁴.

The guidelines identify aggravating and mitigating factors which may be particularly relevant to each individual offence and to which sentencers should have regard⁵.

1 The Sentencing Guidelines Council Guideline *Magistrates' Court Sentencing Guidelines* (2008). The guideline applies to all relevant cases appearing for allocation (mode of trial) or for sentence on or after 4 August 2008 and replaces the guidelines which were effective from 1 January 2004: *Magistrates' Court Sentencing Guidelines* (2008) foreword, introduction. The guidelines apply to all adult offenders: *Magistrates' Court Sentencing Guidelines* (2008) introduction.

2 *Magistrates' Court Sentencing Guidelines* (2008) foreword.

3 *Magistrates' Court Sentencing Guidelines* (2008) user guide.

4 *Magistrates' Court Sentencing Guidelines* (2008) user guide.

5 *Magistrates' Court Sentencing Guidelines* (2008) user guide. While the lists in the offence guidelines and pullout card aim to identify the most common aggravating and mitigating factors, they are not intended to be exhaustive and sentencers should always consider whether there are any other factors that make the offence more or less serious: *Magistrates' Court Sentencing Guidelines* (2008) user guide.

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645. Assault and other offences against the person.

The Sentencing Guidelines Council Guideline on assault and other offences against the person¹ covers the sentencing of offences of assault which do not result in the death of the victim but involve the infliction of permanent or temporary harm on a victim by the direct action of an offender, or an intention to cause harm, even if harm does not in fact result². Although the degree of (or lack of) physical harm suffered by a victim may generally influence sentence for offences against the person the harm also encompasses any harm that the offence was intended to cause or might foreseeably have caused³.

The most common factors that are likely to aggravate an offence against the person are: planning of an offence; offenders operating in groups or gangs; deliberate targeting of vulnerable victims; offence is committed against those working in the public sector or providing a service to the public; use of a weapon to frighten or injure the victim; a sustained assault or repeated assaults on the same victim; and location of the offence (ie an isolated place)⁴.

Where provocation is put forward as a mitigating factor the court should refer to the principles established in guidelines on sentencing for manslaughter by reason of provocation⁵ or on sentencing offences involving domestic violence⁶ as appropriate⁷.

A court must consider making a compensation order in respect of any personal injury, loss or damage occasioned⁸.

The following ancillary orders are available in relation to offenders convicted of assault or another offence against the person and should be considered in appropriate cases⁹:

- 2139 (1) exclusion orders¹⁰;
- 2140 (2) drinking banning orders¹¹;
- 2141 (3) anti-social behaviour orders¹²;
- 2142 (4) football banning orders¹³.

1 Ie the Sentencing Guidelines Council Guideline *Assault and other Offences Against the Person* (2008). The guideline applies to the sentencing of offenders aged 18 and over: see *Assault and other Offences Against the Person* (2008) foreword.

2 See *Assault and other Offences Against the Person* (2008) Pt 1 para 1. Where the offence was committed in a domestic context, sentencers should also refer to the Sentencing Guidelines Council Guideline *Overarching Principles: Domestic Violence* (2006) (see PARA 651). Where the offence was committed against a child see also the Sentencing Guidelines Council Guideline *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) (see PARAS 646, 647).

3 *Assault and other Offences Against the Person* (2008) Pt 1 para 9.

4 *Assault and other Offences Against the Person* (2008) Pt 1 para 13. Where a number of aggravating factors are present together and form an integral part of the offence for example in the phenomenon known as 'happy slapping' the court will need to consider the combined aggravated effect of these factors and particular weight will be attached to factors involving further degradation of a victim such as internet publication of the attack: *Assault and other Offences Against the Person* (2008) Pt 1 para 14. When an offence was committed in the context of an attempted honour killing or in an effort to force a victim into an arranged marriage the general aggravating factors 'abuse of trust' and/or 'abuse of power' will invariably be present and will be taken into account when assessing the seriousness of an individual offence: *Assault and other Offences Against the Person* (2008) Pt 1 para 16.

5 le the Sentencing Guidelines Council Guideline *Manslaughter by Reason of Provocation* (2005) (see PARA 652).

6 le Sentencing Guidelines Council Guideline *Overarching Principles: Domestic Violence* (2006) (see PARA 651).

7 *Assault and other Offences Against the Person* (2008) Pt 1 paras 29, 30.

8 *Assault and other Offences Against the Person* (2008) Pt 1 para 34.

9 *Assault and other Offences Against the Person* (2008) Pt 1 para 35.

10 See the Licensed Premises (Exclusion of Certain Persons) Act 1980 s 1; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 141.

11 See the Violent Crime Reduction Act 2006 s 1; and PARA 319 et seq.

12 See the Crime and Disorder Act 1998 s 1C; and PARA 304 et seq.

13 See the Football Spectators Act 1989 s 14A and Sch 1; and PARA 326 et seq.

UPDATE

645 Assault and other offences against the person

NOTES 2, 4--See *A-G's Reference (No 80 of 2009)*; *R v Moore* [2010] All ER (D) 269 (Feb), CA (judge had been wrong not to refer to sentencing guidelines in case of domestic violence committed in domestic setting).

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646. Assaults on children.

Part one of the Sentencing Guidelines Council Guideline on assaults on children and cruelty to a child¹ sets out additional principles² which should be considered when the victim of the assault is a child (aged 15 and under)³.

The fact that the victim is a child is likely to aggravate the seriousness of the offence where the offender is an adult⁴. The most relevant aggravating factors are: victim is particularly vulnerable; abuse of power; abuse of position of trust; an especially serious physical or psychological effect on the victim, even if unintended; presence of others especially children; additional degradation of the victim; sadistic behaviour; threats to prevent the victim reporting the offence; deliberate concealment of the victim from the authorities and failure to seek medical help⁵.

The defence of lawful chastisement is available only in relation to a charge of common assault⁶. However where the charge is an assault occasioning actual bodily harm such a finding should result in a substantial reduction in sentence and should not normally result in a custodial sentence⁷. Furthermore where not only was the injury neither intended nor foreseen, but was not even reasonably foreseen, then a discharge might be appropriate⁸.

The court should consider any adverse effect the sentence may have on the victim⁹.

1 See the Sentencing Guidelines Council Guideline *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1. The guideline applies to the sentencing of offenders on or after 3 March 2008: *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) foreword.

2 As to guidelines applying to the sentencing of offenders convicted of assault see the Sentencing Guidelines Council Guideline *Assault and other Offences against the Person* (2008); and PARA 645. These guidelines apply to offenders aged 18 or over where primarily the victim is aged 16 or over.

3 See *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1.

4 See *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1(A) paras 5, 7.

5 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1(A) para 9.

6 See *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1(A) para 12.

7 See *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1(A) paras 13, 14.

8 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1(A) para 14.

9 See *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 1(B) paras 15-22. Such considerations are where the child may end up in care if the offender is subject to a custodial sentence or where the offender is the sole or primary care giver.

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647. Cruelty to a child.

Part two of the Sentencing Guidelines Council Guideline on assaults on children and cruelty to a child¹ provides guidance in relation to the offence of cruelty to a child² which has a wide-ranging definition that can include assault but also other forms of conduct likely to cause a child under 16 years of age unnecessary suffering or injury to health³. In order to assess properly the seriousness of an offence, the precise nature of the offence must be established before consideration is given to a range of contingent factors, including the defendant's intent, the length of time over which the cruelty took place, and the degree of physical and psychological harm suffered by the victim⁴.

Child cruelty may be the consequence of a wide range of factors⁵. The extent to which any of these factors might have contributed to the commission of an offence will be important in determining the culpability of the offender⁶. The extent to which remorse should influence sentence will always have to be judged in the light of all the circumstances surrounding the case⁷.

The normal starting point for an offence of child cruelty should be a custodial sentence⁸. However the length of sentence will be influenced by the circumstances in which the offence took place⁹.

The following factors will aggravate offences of child cruelty: targeting one particular child from the family; sadistic behaviour; threats to prevent the victim from reporting the offence; deliberate concealment of the victim from the authorities; and failure to seek medical help¹⁰. The sentencing starting points for the offence of child cruelty have been calculated to reflect the likelihood of psychological harm and this cannot be treated as aggravating factors¹¹. Where there is an especially serious physical or psychological effect on the victim, even if unintended, this should increase sentence¹².

The court should consider any adverse effect the sentence may have on the victim¹³.

Seeking medical help or bringing the situation to the notice of the authorities will mitigate the offence of child cruelty¹⁴. The most relevant areas of personal mitigation are likely to be: mental illness/depression; inability to cope with the pressures of parenthood; lack of support; sleep deprivation¹⁵; offender dominated by an abusive or stronger partner; extreme behavioural difficulties in the child, often coupled with a lack of support; inability to secure assistance or support services in spite of every effort having been made by the offender¹⁶.

1 See the Sentencing Guidelines Council Guideline *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2. The guideline applies to the sentencing of offenders on or after 3 March 2008: *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) foreword.

2 See an offence under the Children and Young Persons Act 1933 s 1(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 143.

3 See the *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2. There are generally four accepted categories of assault and ill-treatment; failure to protect; neglect; and abandonment: *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(B) para 24. However it is not appropriate to identify one category of child cruelty as being automatically more serious than another: *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 28.

- 4 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 29.
- 5 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 31. Such factors include: sadism; violence resulting from any number of causes; a reduced ability to protect a child in the face of aggression from an overbearing partner; indifference or apathy resulting from low intelligence or induced by alcohol or drug dependence; immaturity or social deprivation resulting in an inability to cope with the pressures of caring for children; psychiatric illness.
- 6 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 32. A court must strike a balance between the need to reflect the serious view which society takes of the ill-treatment of very young children and the need to protect those children, and also the pressures upon immature and inadequate parents attempting to cope with the problems of infancy: *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 33.
- 7 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 34.
- 8 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 35.
- 9 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 35.
- 10 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 42.
- 11 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 49.
- 12 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 49.
- 13 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(D) paras 44-57. Such considerations are where the child may end up in care if the offender is subject to a custodial sentence or where the offender is the sole or primary care giver.
- 14 See *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 43.
- 15 However some of the factors identified above, in particular sleep deprivation, lack of support and an inability to cope could be regarded as an inherent part of caring for children, especially when a child is very young. Thus, such factors could be put forward in mitigation by most carers charged with an offence of child cruelty. It follows that, before being accepted in mitigation, there must be evidence that these factors were present to a high degree and had an identifiable and significant impact on the offender's behaviour: *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 60.
- 16 *Overarching Principles: Assaults on Children and Cruelty to a Child* (2008) Pt 2(C) para 59.

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648. Failure to surrender to bail.

The Sentencing Guidelines Council Guideline relating to the failure to surrender to bail¹ applies to the sentencing of adult offenders only². In assessing culpability, a court will need to consider whether the failure to surrender was intended to cause harm and, if so, what level of harm³. The assessment of culpability requires consideration of the immediate reason why the defendant failed to appear⁴.

In assessing harm, a court will need to consider to what extent the failure to surrender impeded the course of justice including the harm that the offence might foreseeably have caused⁵.

Failure to surrender to custody is an offence in its own right and the sentence imposed should be proportionate to the seriousness of the offending behaviour itself⁶. Seriousness is not reduced automatically by subsequent acquittal of the original offence⁷.

The following aggravating factors are particularly relevant to an offence of failing to surrender to bail: repeat offending⁸; offender's absence causes a lengthy delay to the administration of the court⁹; determined attempt to avoid the jurisdiction of the court¹⁰.

Prompt voluntary surrender might mitigate sentence and may indicate remorse¹¹. A misunderstanding may be a mitigating factor¹². Where an offender has literacy or language difficulties these may be mitigating factors where potential problems were not identified and appropriate steps taken¹³. Caring responsibilities preventing surrender may also be personal mitigation¹⁴.

1 I.e. the Sentencing Guidelines Council Guideline *Fail to Surrender to Bail* (2007). The guideline applies to the sentencing of offenders convicted of failing to surrender to bail who are sentenced on or after 10 December 2007: *Fail to Surrender to Bail* (2007) foreword. As to the relevant statutory provision see the Bail Act 1976 s 6; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1199. As to procedural issues see *Fail to Surrender to Bail* (2007) Pt C.

2 See *Fail to Surrender to Bail* (2007) foreword.

3 See *Fail to Surrender to Bail* (2007) Pt B para 4.

4 See *Fail to Surrender to Bail* (2007) Pt B para 6.

5 See *Fail to Surrender to Bail* (2007) Pt B paras 4, 7.

6 *Fail to Surrender to Bail* (2007) Pt B para 11.

7 *Fail to Surrender to Bail* (2007) Pt B para 13.

8 *Fail to Surrender to Bail* (2007) Pt B para 17. Defendants who repeatedly fail to attend court are likely to receive more severe sentences: *Fail to Surrender to Bail* (2007) Pt B para 14.

9 *Fail to Surrender to Bail* (2007) Pt B para 17.

10 *Fail to Surrender to Bail* (2007) Pt B para 17. Leaving the jurisdiction or changing identity and appearance to avoid the court's jurisdiction are aggravating factors: see *Fail to Surrender to Bail* (2007) Pt B para 16.

11 *Fail to Surrender to Bail* (2007) Pt B para 18.

12 *Fail to Surrender to Bail* (2007) Pt B para 20.

13 See *Fail to Surrender to Bail* (2007) Pt B para 21.

14 See *Fail to Surrender to Bail* (2007) Pt B para 22.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL/(ii) Guidelines relating to Particular Offences/649. Sexual Offences Act 2003.

649. Sexual Offences Act 2003.

The Sentencing Guidelines Council Guideline on the Sexual Offences Act 2003¹ covers over 50 offences contained within the Sexual Offences Act 2003².

All sexual offences where the activity is non-consensual, coercive or exploitative result in harm³. Harm is also inherent where victims ostensibly consent but where their capacity to give informed consent is affected by their youth or mental disorder⁴. The physical effects⁵ may be very serious⁶ and the psychological effects⁷ may be equally or even more serious⁸. Where the activity is in any way non-consensual, coercive or exploitative, the offence is inherently harmful and therefore the offender's culpability is high⁹.

The youth and immaturity of an offender must always be potential mitigating factors for the courts to take into account when passing sentence¹⁰.

There are a number of orders and requirements relevant to those convicted of sexual offences mentioned in the guidelines¹¹.

1 Ie the Sentencing Guidelines Council Guideline *Sexual Offences Act 2003* (2007). The guidelines applies to the sentencing of offenders convicted of any of the sexual offences covered by the guideline who are sentenced on or after 14 May 2007: *Sexual Offences Act 2003* (2007) foreword.

2 Part 2 of the *Sexual Offences Act 2003* (2007) covers non-consensual offences (ie rape and assault by penetration; sexual assault; causing or inciting sexual activity; other non-consensual offences); Pt 3 covers offences involving ostensible consent (ie offences involving children; offences against vulnerable adults); Pt 4 covers preparatory offences (ie sexual grooming; committing another offence with intent; trespass with intent; administering a substance with intent); Pt 5 covers other offences (ie prohibited adult relationships: sex with an adult relative; sexual activity in a public toilet; exposure; voyeurism; intercourse with an animal; sexual penetration of a corpse); Pt 6 covers exploitation offences (ie indecent photographs of children; abuse of children through prostitution and pornography; exploitation of prostitution; trafficking).

3 *Sexual Offences Act 2003* (2007) Pt 1 para 1.10.

4 *Sexual Offences Act 2003* (2007) Pt 1 para 1.10.

5 Ie injury, pregnant or sexually transmitted infections.

6 *Sexual Offences Act 2003* (2007) Pt 1 para 1.11.

7 Ie violation of the victim's sexual autonomy; fear; humiliation; degradation; shame; embarrassment; inability to trust; inability to form personal or intimate relationships in adulthood; self harm or suicide.

8 *Sexual Offences Act 2003* (2007) Pt 1 para 1.11.

9 *Sexual Offences Act 2003* (2007) Pt 1 para 1.12. Planning an offence makes the offender more highly culpable than engaging in opportunistic or impulsive offending: *Sexual Offences Act 2003* (2007) para 1.12.

10 *Sexual Offences Act 2003* (2007) Pt 1 para 1.17.

11 See *Sexual Offences Act 2003* (2007) Pt 1 paras 1.19-1.32.3.

UPDATE

649 Sexual Offences Act 2003

NOTE 2--See *R v B* [2010] All ER (D) 145 (Feb), CA (mother inciting child to engage in sexual activity where child forced to have non-consensual intercourse in arranged marriage).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL/(ii) Guidelines relating to Particular Offences/650. Breach of a protective order.

650. Breach of a protective order.

The Sentencing Guidelines Council Guideline on breach of a protective order¹ deals specifically with the sentencing of offenders who have breached either a restraining order² imposed in order to prevent future conduct causing harassment or fear of violence, or a non-molestation order³ which prohibits a person from molesting another person⁴. When sentencing for a breach of a protective order (which would have been imposed to protect a victim from further harm), the main aim should be to achieve future compliance with that order⁵. The facts that constitute a breach of a protective order may or may not also constitute a substantive offence⁶.

A court will need to reassess the level of risk posed by the offender⁷. The nature of the originating conduct or offence is relevant to sentencing for the breach in so far as it allows a judgment to be made on the level of harm caused to the victim by the breach, and the extent to which that harm was intended by the offender⁸.

Many of the aggravating factors which apply to an offence in a domestic context will apply also to an offence arising from breach of a protective order⁹.

Mitigating factors are where the breach was committed after a long period of compliance and where the victim initiated contact¹⁰.

1 See the Sentencing Guidelines Council Guideline *Breach of a Protective Order* (2006). The guideline applies to offenders convicted of breach of an order who are sentenced on or after 18 December 2006: *Breach of a Protective Order* (2006) foreword.

2 As to restraining orders see the Protection Against Harassment Act 1997; and PARA 349.

3 As to non-molestation orders see the Family Law Act 1996 see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 73 (2009) PARA 716.

4 *Breach of a Protective Order* (2006) foreword.

5 See *Breach of a Protective Order* (2006) Pt C paras 3.3, 3.4; Pt E.

6 *Breach of a Protective Order* (2006) Pt B para 2.1. Where they do constitute a substantive offence, it is desirable that the substantive offence and the breach of the order should be charged as separate counts. Where necessary, consecutive sentences should be considered to reflect the seriousness of the counts and achieve the appropriate totality.

7 See *Breach of a Protective Order* (2006) Pt E. If the offender requires treatment or assistance for mental health or other issues, willingness to undergo treatment or accept help may influence sentence.

8 See *Breach of a Protective Order* (2006) Pt C paras 3.5-3.13, Pt E. Breach of a protective order will generally be more serious than breach of a conditional discharge: *Breach of a Protective Order* (2006) Pt C para 3.13.

9 *Breach of a Protective Order* (2006) Pt D para 4.1. As to the sentencing guidelines relating to domestic violence see PARA 651.

10 See *Breach of a Protective Order* (2006) Pt D paras 4.12, 4.13.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL/(ii) Guidelines relating to Particular Offences/651. Domestic violence.

651. Domestic violence.

The Sentencing Guidelines Council Guideline relating to domestic violence¹ covers any incident of threatening behaviour, violence or abuse psychological, physical, sexual, financial or emotional between adults who are or have been intimate partners or family members, regardless of gender or sexuality².

As a starting point for sentence, offences committed in a domestic context should be regarded as being no less serious than offences committed in a nondomestic context³.

A court is entitled to take into account anything occurring within the relationship as a whole which may reveal relevant aggravating or mitigating factors⁴.

The following aggravating factors are of particular relevance: abuse of trust and abuse of power; victim is particularly vulnerable; impact on children; using contact arrangements with a child to instigate an offence; a proven history of threats or violence by the offender in a domestic setting; a history of disobedience to court orders; victim forced to leave home⁵.

The following mitigating factors are of particular relevance: positive good character; provocation⁶.

The wishes of the victim and the effect of the sentence should also be considered⁷.

1 See the Sentencing Guidelines Council Guideline *Overarching Principles: Domestic Violence* (2006). This guideline applies to all offences sentenced on or after 18 December 2006: *Overarching Principles: Domestic Violence* (2006) foreword.

2 *Overarching Principles: Domestic Violence* (2006) Pt A para 1.1.

3 *Overarching Principles: Domestic Violence* (2006) Pt B para 2.1.

4 *Overarching Principles: Domestic Violence* (2006) Pt C para 3.1.

5 See *Overarching Principles: Domestic Violence* (2006) Pt C paras 3.1.

6 See *Overarching Principles: Domestic Violence* (2006) Pt C paras 3.20-3.23.

7 See *Overarching Principles: Domestic Violence* (2006) Pt D paras 4.1-4.4.

UPDATE

651 Domestic violence

NOTE 3--See *A-G's Reference (No 80 of 2009)*; *R v Moore* [2010] All ER (D) 269 (Feb), CA (judge had been wrong not to refer to sentencing guidelines in case of domestic violence committed in domestic setting).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL/(ii) Guidelines relating to Particular Offences/652. Manslaughter by reason of provocation.

652. Manslaughter by reason of provocation.

The Sentencing Guidelines Council Guideline in relation to manslaughter by reason of provocation¹ provides that the starting point for sentencing should be a custodial sentence². The following factors influence the sentence: the degree of provocation³; the extent and timing of the retaliation⁴; the post-offence behaviour of the offender⁵; and the use of a weapon⁶.

1 See the Sentencing Guidelines Council Guideline *Manslaughter by Reason of Provocation* (2005). The guidelines apply to offenders convicted of manslaughter by reason of provocation who are sentenced after 28 November 2005: *Manslaughter by Reason of Provocation* (2005) foreword.

2 *Manslaughter by Reason of Provocation* (2005) Pt B.

3 See *Manslaughter by Reason of Provocation* (2005) Pt C paras 3.1, 3.2.

4 See *Manslaughter by Reason of Provocation* (2005) Pt C paras 3.3-3.5.

5 See *Manslaughter by Reason of Provocation* (2005) Pt C para 3.6.

6 See *Manslaughter by Reason of Provocation* (2005) Pt C para 3.7.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL/(ii) Guidelines relating to Particular Offences/653. Robbery.

653. Robbery.

The Sentencing Guidelines Council Guideline on robbery¹ identifies the following five categories of robbery:

- 2143 (1) street robbery or 'mugging'²;
- 2144 (2) robberies of small businesses³;
- 2145 (3) less sophisticated commercial robberies⁴;
- 2146 (4) violent personal robberies in the home; and
- 2147 (5) professionally planned commercial robberies⁵.

For each of categories (1) to (3) the guideline identifies three levels of seriousness based on the extent of force used or threatened and provides for each level of seriousness a sentencing range and a starting point within that range⁶. The guideline also distinguishes between adult and youth offenders providing for them as separate groups⁷. Robbery will usually merit a custodial sentence but exceptional circumstances may justify a non-custodial sentence for an adult and, more frequently, a young offender⁸.

No guideline is provided for categories (4) and (5) and relevant guidance from the Court of Appeal applies⁹.

1 See the Sentencing Guidelines Council Guideline *Robbery* (2006). The guideline applies to the sentencing of offenders convicted of robbery who are sentenced on or after 1 August 2006: *Robbery* (2006), foreword. As to the relevant statutory provision see the Theft Act 1968 s 8(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293.

2 This usually involves some physical force (or threat) to steal modest sums, although in some cases there is significant intimidation or violence and the victim may or may not be physically injured: see *Robbery* (2006) Pt 1.

3 This covers robberies of businesses such as a small shop or post office, petrol station or public transport/taxi facility which may well lack the physical and electronic security devices available to banks or building societies and larger businesses: *Robbery* (2006) Pt 1.

4 This covers a wide range of locations, extent of planning and degree of violence including less sophisticated bank robberies or where larger commercial establishments are the target but without detailed planning or high levels of organisation: *Robbery* (2006) Pt 1.

5 See *Robbery* (2006) Pts 1, 2.

6 See *Robbery* (2006) Pt 1.

7 See *Robbery* (2006) Pt 1.

8 See *Robbery* (2006) foreword.

9 See *Robbery* (2006) Pt 2. As to guidance by the Court of Appeal see PARA 659.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(3) GUIDELINES BY THE SENTENCING GUIDELINES COUNCIL/(ii) Guidelines relating to Particular Offences/654. Fraud.

654. Fraud.

The Sentencing Guidelines Council Guideline on fraud¹ covers the following types of statutory offences of fraud²:

- 2148 (1) confidence fraud³;
- 2149 (2) possessing, making or supplying articles for use in fraud⁴;
- 2150 (3) banking and insurance fraud, and obtaining credit through fraud⁵;
- 2151 (4) benefit fraud⁶;
- 2152 (5) revenue fraud (against HM Revenue and Customs)⁷;

The guidelines do not, however, cover the common law offences of cheating the public revenue or conspiracy to defraud⁸. The offence of obtaining services dishonestly are also not included in the guidelines but the guidelines do discuss the approach to be taken when dealing with such an offence⁹.

Generally fraud offences involve the highest level of culpability¹⁰. Fraud involving numerous people may indicate planning or professional activity and therefore aggravate an offence of fraud¹¹.

1 Ie the Sentencing Guidelines Council Guideline *Sentencing for Fraud* (2009). The guideline applies to the sentencing of offenders aged 18 and over who are sentenced on or after 26 October 2006 of a statutory offence of fraud: *Sentencing for Fraud* (2009), foreword. As to the relevant statutory provision see the Theft Act 1968 s 8(1); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 293.

2 See the *Sentencing for Fraud* (2009) Pt A para 5.

3 Ie offences under the Fraud Act 2006 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) or the Theft Act 1968 s 17 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 316).

4 Ie offences under the Fraud Act 2006 ss 1, 6 and 7 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

5 Ie offences under the Fraud Act 2006 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) or the Theft Act 1968 s 17 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 316).

6 Ie offences under the Fraud Act 2000 s 1; the Theft Act 1968 s 17; the Tax Credits Act 2002 s 35 (see **SOCIAL SECURITY AND PENSIONS**); or the Social Security Administration Act 1992 ss 111(1A), (1B), (1D), (1E), 111A(1) (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 404).

7 Ie offences under the Fraud Act 2006 s 1; the Theft Act 1968 s 17; the Value Added Tax Act 1994 s 72(1), (3), (8) (see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARAS 317-318); the Finance Act 2000 s 144 (see **INCOME TAXATION** vol 23(2) (Reissue) PARA 1824); and the Customs and Excise Management Act 1979 ss 50(1)(a), (2), 170(1)(a)(i), (ii), (b), (2)(a), 170B (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 994, 1178, 1180).

8 *Sentencing for Fraud* (2009) Pt A para 2.

9 See *Sentencing for Fraud* (2009) Pt A para 6.

10 *Sentencing for Fraud* (2009) Pt B para 11. As to culpability and harm see further *Sentencing for Fraud* (2009) Pt B paras 12-21.

11 *Sentencing for Fraud* (2009) Pt B para 12. As to aggravating factors see further *Sentencing for Fraud* (2009) Pt B paras 22-28. As to mitigating factors see *Sentencing for Fraud* (2009) Pt B paras 29-46.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(4) GUIDELINES BY THE SENTENCING COUNCIL FOR ENGLAND AND WALES/655. Sentencing guidelines.

(4) GUIDELINES BY THE SENTENCING COUNCIL FOR ENGLAND AND WALES

655. Sentencing guidelines.

As from a day to be appointed¹ the Sentencing Council for England and Wales² must prepare sentencing guidelines³ about the discharge of a court's duty⁴ in connection with reductions in sentences for guilty pleas⁵ and about the application of any rule of law as to the totality of sentences⁶. The Council may also prepare sentencing guidelines about any other matter⁷, from time to time review and revise any guidelines it has issued⁸, and must consider any proposals received from the Lord Chancellor⁹ or the Court of Appeal¹⁰ for the preparation or revision of existing or further guidelines¹¹.

When exercising its functions relating to the making or revision of guidelines the Council must have regard to:

- 2153 (1) the sentences imposed by courts in England and Wales for offences¹²;
- 2154 (2) the need to promote consistency in sentencing¹³;
- 2155 (3) the impact of sentencing decisions on victims of offences¹⁴;
- 2156 (4) the need to promote public confidence in the criminal justice system¹⁵;
- 2157 (5) the cost of different sentences and their relative effectiveness in preventing re-offending¹⁶; and
- 2158 (6) the results of the Council's monitoring¹⁷ of the operation and effect of its guidelines¹⁸.

Where the Council has prepared or revised guidelines it must first publish such guidelines or revisions as draft guidelines¹⁹ and must consult about the draft guidelines or draft revisions with appropriate persons²⁰ before issuing them as definitive guidelines²¹.

Where the Council decides to prepare or revise sentencing guidelines²² and is of the opinion that the urgency of the case makes it impractical to comply with the procedural requirements²³ it may prepare or revise the guidelines without first publishing them²⁴ as draft guidelines²⁵ and may amend and issue the guidelines²⁶ without having fully complied with the consultation requirements²⁷.

1 At the date at which this volume states the law no date had been appointed for the coming into force of the Coroners and Justice Act 2009 Pt 4 Ch 1 (ss 118-136), which makes provision for the establishment and operation of the Sentencing Council for England and Wales (see the text and notes 2-27; and PARAS 637, 656-658).

2 As to the establishment, functions, constitution etc of the Sentencing Council for England and Wales see PARA 637.

3 In the Coroners and Justice Act 2009 Pt 4 Ch 1 'sentencing guidelines' means guidelines relating to the sentencing of offenders: ss 120(1), 136 (not yet in force). A sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender: s 120(2) (not yet in force). As to the meanings of 'sentence' and 'sentencing' see PARA 637 note 10.

4 Under the Criminal Justice Act 2003 s 144: see PARA 623.

5 Coroners and Justice Act 2009 s 120(3)(a) (not yet in force).

6 Coroners and Justice Act 2009 s 120(3)(b) (not yet in force).

7 Coroners and Justice Act 2009 s 120(4) (not yet in force).

8 Coroners and Justice Act 2009 s 120(9) (not yet in force).

9 The Lord Chancellor may propose to the Council that sentencing guidelines be prepared or revised by the Council under the Coroners and Justice Act 2009 s 120 in relation to a particular offence, particular category of offence or particular category of offenders, or in relation to a particular matter affecting sentencing: s 124(1)(a) (not yet in force).

10 Where the criminal division of the Court of Appeal is seised of an appeal against, or a reference under the Criminal Justice Act 1988 s 36 (reviews of sentencing: see PARAS 55-57) with respect to, the sentence passed for an offence (the 'relevant offence') the Court of Appeal may propose to the Council that sentencing guidelines be prepared or revised by the Council under the Coroners and Justice Act 2009 s 120 in relation to the relevant offence or in relation to a category of offences within which the relevant offence falls: s 124(2), (3) (not yet in force). Such a proposal may be included in the appeal court's judgment in the appeal: s 124(4) (not yet in force).

For these purposes the Court of Appeal is seised of an appeal against a sentence if the court or a single judge has granted leave to appeal against the sentence under the Criminal Appeal Act 1968 s 9 or s 10 (appeals against sentence: see PARAS 46-48) or, in a case where the judge who passed the sentence granted a certificate of fitness for appeal under s 9 or s 10, notice of appeal has been given, and the appeal has not been abandoned or disposed of (Coroners and Justice Act 2009 s 124(6) (not yet in force)) and it is seised of a reference under the Criminal Justice Act 1988 s 36 if it has given leave under s 36(1) and the reference has not been disposed of (Coroners and Justice Act 2009 s 124(7) (not yet in force)).

Section 124 is without prejudice to any power of the appeal court to provide guidance relating to the sentencing of offenders in a judgment of the court: s 124(8) (not yet in force).

11 Coroners and Justice Act 2009 s 124(5) (not yet in force). If the Council receives a proposal under s 124(1) or (3) to prepare or revise any guidelines it must consider whether to do so: s 124(5) (not yet in force).

12 Coroners and Justice Act 2009 s 120(11)(a) (not yet in force).

13 Coroners and Justice Act 2009 s 120(11)(b) (not yet in force).

14 Coroners and Justice Act 2009 s 120(11)(c) (not yet in force).

15 Coroners and Justice Act 2009 s 120(11)(d) (not yet in force).

16 Coroners and Justice Act 2009 s 120(11)(e) (not yet in force).

17 Ie the monitoring carried out under the Coroners and Justice Act 2009 s 128 (see PARA 637).

18 Coroners and Justice Act 2009 s 120(11)(f) (not yet in force).

19 Coroners and Justice Act 2009 s 120(5), (10) (not yet in force). The Council is required to publish a resource assessment in respect of draft guidelines: see s 127; and PARA 637.

20 Coroners and Justice Act 2009 s 120(6) (not yet in force). The Council is required to consult with the Lord Chancellor (s 120(6)(a) (not yet in force)), such persons as the Lord Chancellor may direct (s 120(6)(b) (not yet in force)), the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs) (s 120(6)(c) (not yet in force)) and such other persons as the Council considers appropriate (s 120(6)(d) (not yet in force)).

21 Coroners and Justice Act 2009 s 120(7), (8) (not yet in force). In the case of the guidelines which it must make under s 120(3) (see the text and notes 4-6), the Council must issue the guidelines or the revised guidelines as definitive guidelines after making any amendments of the guidelines which it considers appropriate (s 120(7) (not yet in force)); in any other case, the Council may issue the guidelines or the revised guidelines as definitive guidelines after making such amendments (s 120(8) (not yet in force)).

22 Coroners and Justice Act 2009 s 123(1)(a) (not yet in force).

23 Coroners and Justice Act 2009 s 123(1)(b) (not yet in force). The procedural requirements referred to are the requirements of s 120 (see the text and notes 1-21). The guidelines or revised guidelines must state that the Council was of this opinion and give the Council's reasons for that opinion: s 123(4) (not yet in force).

24 le under the Coroners and Justice Act 2009 s 120(5) (see the text and note 19).

25 Coroners and Justice Act 2009 s 123(2)(a) (not yet in force).

26 le under the Coroners and Justice Act 2009 s 120(7) or (8) (see the text and note 21).

27 Coroners and Justice Act 2009 s 123(3)(a) (not yet in force). The consultation requirements with which the Council need not comply in these circumstances are the requirements of s 120(6)(b)-(d) (see the text and note 20); thus the Council continues to be required to consult the Lord Chancellor in these circumstances.

UPDATE

655 Sentencing guidelines

NOTES--Coroners and Justice Act 2009 ss 120, 123, 124, 136 in force on 6 April 2010: SI 2010/816.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(4) GUIDELINES BY THE SENTENCING COUNCIL FOR ENGLAND AND WALES/656. Sentencing ranges.

656. Sentencing ranges.

As from a day to be appointed¹ when exercising functions relating to the making or revision of sentencing guidelines² the Sentencing Council for England and Wales³ is to have regard to the desirability of sentencing guidelines⁴ which relate to a particular offence being structured so that the guidelines⁵:

- 2159 (1) if reasonably practicable given the nature of the offence, describe⁶ different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed⁷;
- 2160 (2) specify the range of sentences (the 'offence range') which, in the opinion of the Council, it may be appropriate for a court to impose on an offender convicted of that offence⁸;
- 2161 (3) specify the sentencing starting point in the offence range⁹;
- 2162 (4) list relevant aggravating or mitigating factors¹⁰; and
- 2163 (5) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other relevant aggravating or mitigating factors¹¹ as the Council considers to be of particular significance in relation to the offence or the offender¹².

¹ At the date at which this volume states the law no date had been appointed for the coming into force of the Coroners and Justice Act 2009 Pt 4 Ch 1 (ss 118-136), which makes provision for the establishment and operation of the Sentencing Council for England and Wales (see the text and notes 2-12; and PARAS 637, 655, 657-658).

² I.e. function under the Coroners and Justice Act 2009 s 120 (see PARA 655).

³ As to the establishment, functions, constitution etc of the Sentencing Council for England and Wales see PARA 637.

⁴ As to the meaning of 'sentencing guidelines' see PARA 655 note 3.

⁵ I.e. in the way described by the Coroners and Justice Act 2009 s 121(2)-(9) (see the text and notes 6-12). The provision made in accordance with s 121(2)-(8) may be different for different circumstances or cases involving the offence: s 121(9) (not yet in force).

⁶ I.e. by reference to one or more of:

966 (1) the offender's culpability in committing the offence (Coroners and Justice Act 2009 s 121(2), (3)(a) (not yet in force));

967 (2) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence (s 121(3)(v) (not yet in force)); and

968 (3) such other factors as the Council considers to be particularly relevant to the seriousness of the offence in questions (s 121(3)(c) (not yet in force)).

⁷ Coroners and Justice Act 2009 s 121(2) (not yet in force). If the guidelines describe different categories of case in accordance with s 121(2) they should specify for each category the range of sentences (the 'category range') within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category (s 121(4)(b) (not yet in force)) and the sentencing starting point in the offence range for each of those categories (s 121(5)(b) (not yet in force)).

8 Coroners and Justice Act 2009 s 121(4)(a) (not yet in force). See also s 121(4)(b); and note 7.

9 Coroners and Justice Act 2009 s 121(5)(a) (not yet in force). See also s 121(5)(b); and note 7. The sentencing starting point in the offence range for a category of case described in the guidelines in accordance with s 121(2) (see the text and note 7) is: (1) the sentence within that range which the Council considers to be the appropriate starting point for cases within that category before taking account of the factors mentioned in s 121(6) (see the text and notes 10-12) and assuming the offender has pleaded not guilty (s 121(10)(a) (not yet in force)); and (2) where the guidelines do not describe categories of case in accordance with s 121(2), is the sentence within that range which the Council considers to be the appropriate starting point for the offence before taking account of the factors mentioned in s 121(6) and assuming the offender has pleaded not guilty (s 121(10)(b) (not yet in force)).

10 Coroners and Justice Act 2009 s 121(6)(a), (b) (not yet in force), providing that the guidelines should: (1) to the extent not already taken into account by categories of case described in accordance with s 121(2), list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating factors which the Council considers are relevant to such a consideration (s 121(6)(a) (not yet in force)); and (2) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence (s 121(6)(b) (not yet in force)). For the purposes of s 121(6)(b) the following are to be disregarded: (a) the requirements of the Criminal Justice Act 2003 s 144 (reduction in sentences for guilty pleas: see PARA 623) (Coroners and Justice Act 2009 s 121(7)(a) (not yet in force)); (b) the Serious Organised Crime and Police Act 2005 ss 73, 74 (assistance by defendants: reduction or review of sentence: see PARA 625) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence (Coroners and Justice Act 2009 s 121(7)(b) (not yet in force)); and (c) any rule of law as to the totality of sentences (s 121(7)(c) (not yet in force)).

11 The factors within the Coroners and Justice Act 2009 s 121(6)(a) or (b) (see note 10).

12 Coroners and Justice Act 2009 s 121(6)(c) (not yet in force). The provision made in accordance with s 121(6)(c) should be framed in such manner as the Council considers most appropriate for the purpose of assisting the court, when sentencing an offender for the offence, to determine the appropriate sentence within the offence range: s 121(8) (not yet in force).

UPDATE

656 Sentencing ranges

NOTES--Coroners and Justice Act 2009 s 121 in force on 6 April 2010: SI 2010/816.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(4) GUIDELINES BY THE SENTENCING COUNCIL FOR ENGLAND AND WALES/657. Allocation guidelines.

657. Allocation guidelines.

As from a day to be appointed¹ the Sentencing Council for England and Wales² may prepare, review and revise allocation guidelines³, and must consider any proposals received from the Lord Chancellor for the preparation or revision of existing or further guidelines⁴. When exercising its functions relating to the making or revision of allocation guidelines the Council must have regard to the need to promote consistency in decisions⁵ relating to allocation⁶ and the results of the Council's monitoring⁷ of the operation and effect of its guidelines⁸.

Where the Council has prepared or revised allocation guidelines it must first publish such guidelines or revisions as draft guidelines⁹ and must consult about the draft guidelines or draft revisions with appropriate persons¹⁰ before issuing them as definitive guidelines¹¹.

Where the Council decides to prepare or revise allocation guidelines¹² and is of the opinion that the urgency of the case makes it impractical to comply with the procedural requirements¹³ it may prepare or revise the guidelines without first publishing them¹⁴ as draft guidelines¹⁵ and may amend and issue the guidelines¹⁶ without having fully complied with the consultation requirements¹⁷.

1 At the date at which this volume states the law no date had been appointed for the coming into force of the Coroners and Justice Act 2009 Pt 4 Ch 1 (ss 118-136), which makes provision for the establishment and operation of the Sentencing Council for England and Wales (see the text and notes 2-17; and PARAS 637, 655-656, 658).

2 As to the establishment, functions, constitution etc of the Sentencing Council for England and Wales see PARA 637.

3 Coroners and Justice Act 2009 s 122(2), (6) (not yet in force). In Pt 4 Ch 1 'allocation guidelines' means guidelines relating to decisions by a magistrates' court under the Magistrates' Courts Act 1980 s 19 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 659) or the Crown Court under the Crime and Disorder Act 1998 Sch 3 para 7(7) or 8(2)(d) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1141), as to whether an offence is more suitable for summary trial or trial on indictment: Coroners and Justice Act 2009 s 122(1) (not yet in force).

4 Coroners and Justice Act 2009 s 124(1)(b) (not yet in force). The Lord Chancellor may propose to the Council that allocation guidelines be prepared or revised by the Council under s 122: s 124(1)(b) (not yet in force). If the Council receives such a proposal it must consider whether to do so: s 124(3) (not yet in force).

5 I.e. decisions of the kind referred to in the Coroners and Justice Act 2009 s 122(1) (see note 3).

6 Coroners and Justice Act 2009 s 122(8)(a) (not yet in force).

7 I.e. the monitoring carried out under the Coroners and Justice Act 2009 s 128 (see PARA 637).

8 Coroners and Justice Act 2009 s 122(8)(b) (not yet in force).

9 Coroners and Justice Act 2009 s 122(3), (7) (not yet in force). The Council is required to publish a resource assessment in respect of draft allocation guidelines: see s 127; and PARA 637.

10 Coroners and Justice Act 2009 s 122(4) (not yet in force). The Council is required to consult with the Lord Chancellor (s 122(4)(a) (not yet in force)), such persons as the Lord Chancellor may direct (s 122(4)(b) (not yet in force)), the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs) (s 122(4)(c) (not yet in force)) and such other persons as the Council considers appropriate (s 122(4)(d) (not yet in force)).

11 Coroners and Justice Act 2009 s 122(5) (not yet in force). The Council may issue the guidelines or the revised guidelines as definitive guidelines after making any amendments of the guidelines which it considers appropriate: s 122(5) (not yet in force).

12 Coroners and Justice Act 2009 s 123(1)(a) (not yet in force).

13 Coroners and Justice Act 2009 s 123(1)(b) (not yet in force). The procedural requirements referred to are the requirements of s 122 (see the text and notes 1-11). The guidelines or revised guidelines must state that the Council was of this opinion and give the Council's reasons for that opinion: s 123(4) (not yet in force).

14 Ie under the Coroners and Justice Act 2009 s 122(3) (see the text and note 9).

15 Coroners and Justice Act 2009 s 123(2)(b) (not yet in force).

16 Ie under the Coroners and Justice Act 2009 s 122(5) (see the text and note 11).

17 Coroners and Justice Act 2009 s 123(3)(b) (not yet in force). The consultation requirements with which the Council need not comply in these circumstances are the requirements of s 122(4)(b)-(d) (see the text and note 10); thus the Council continues to be required to consult the Lord Chancellor in these circumstances.

UPDATE

657 Allocation guidelines

NOTES--Coroners and Justice Act 2009 ss 122-124 in force on 6 April 2010: SI 2010/816.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(4) GUIDELINES BY THE SENTENCING COUNCIL FOR ENGLAND AND WALES/658. Duty of court to follow guidelines.

658. Duty of court to follow guidelines.

As from a day to be appointed¹ every court must², in sentencing³ an offender⁴, follow any sentencing guidelines⁵ which are relevant to the offender's case⁶ and, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function⁷: this duty⁸ is, however, subject to:

- 2164 (1) the provisions⁹ restricting the imposition of community sentences¹⁰;
- 2165 (2) the provisions¹¹ restricting the imposition of discretionary custodial sentences¹²;
- 2166 (3) the provisions¹³ requiring a custodial sentence to be for the shortest term commensurate with the seriousness of the offence¹⁴;
- 2167 (4) the provisions¹⁵ requiring a fine to reflect the seriousness of an offence¹⁶;
- 2168 (5) the provisions¹⁷ relating to the determination of a minimum term in relation to a mandatory life sentence¹⁸;
- 2169 (6) the provisions¹⁹ imposing a minimum sentence for specified firearms offences²⁰;
- 2170 (7) the provisions²¹ imposing minimum sentences for certain drug trafficking and burglary offences²²; and
- 2171 (8) the provisions²³ imposing minimum sentences for certain offences involving firearms²⁴.

If a court is deciding what sentence to impose on a person ('P') who is guilty of an offence²⁵ and appropriately structured sentencing guidelines²⁶ have been issued in relation to that offence²⁷, the duty imposed on a court²⁸ to follow any sentencing guidelines which are relevant to the offender's case includes²⁹:

- 2172 (a) in all cases, a duty to impose on P, in accordance with the offence-specific guidelines, a sentence which is within the offence range³⁰; and
- 2173 (b) where the offence-specific guidelines describe categories of case³¹, a duty to decide which of the categories most resembles P's case in order to identify the sentencing starting point in the offence range³².

1 At the date at which this volume states the law no date had been appointed for the coming into force of the Coroners and Justice Act 2009 Pt 4 Ch 1 (ss 118-136), which makes provision for the establishment and operation of the Sentencing Council for England and Wales (see the text and notes 2-32; and PARAS 637, 655-657).

2 Ie unless the court is satisfied that it would be contrary to the interests of justice to do so: Coroners and Justice Act 2009 s 125(1) (not yet in force).

3 As to the meanings of 'sentence' and 'sentencing' see PARA 637 note 10.

4 Nothing in these provisions (ie the Coroners and Justice Act 2009 ss 125, 126: see the text and notes 5-32) is to be taken as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with a mentally disordered offender in the manner it considers to be most appropriate in all the circumstances: Coroners and Justice Act 2009 s 125(7) (not yet in force). For this purpose 'mentally disordered', in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983 (see s 1; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 402): Coroners and Justice Act 2009 s 125(8) (not yet in force).

5 As to the meaning of 'sentencing guidelines' see PARA 655 note 3. For these purposes 'sentencing guidelines' means definitive sentencing guidelines (s 125(8) (not yet in force)); and 'definitive sentencing guidelines' means sentencing guidelines issued by the Council under the Coroners and Justice Act 2009 s 120 (see PARA 655) as definitive guidelines, as revised by any subsequent guidelines so issued (s 136 (not yet in force)). The Secretary of State or the Lord Chancellor may by order under s 177(3) provide for existing guidelines (ie sentencing or allocation guidelines issued as definitive guidelines under the Criminal Justice Act 2003 s 170 (see PARA 638) or guidelines with respect to sentencing which were included in any judgment of the Court of Appeal given before 27 February 2004 and not superseded by sentencing guidelines so issued) which have effect immediately before the coming into force of the Coroners and Justice Act 2009 s 125(1) to be treated as guidelines issued by the Sentencing Council for England and Wales: Sch 22 para 28(1)(b), (2) (not yet in force). At the date at which this volume states the law no such order had been made.

6 Coroners and Justice Act 2009 s 125(1)(a) (not yet in force). See note 5.

7 Coroners and Justice Act 2009 s 125(1)(b) (not yet in force).

8 Ie the duty imposed by the Coroners and Justice Act 2009 s 125(1) (see the text and notes 1-7).

9 Ie the Criminal Justice Act 2003 s 148(1), (2): see PARA 164.

10 Coroners and Justice Act 2009 s 125(6)(a) (not yet in force).

11 Ie the Criminal Justice Act 2003 s 152: see PARA 19.

12 Coroners and Justice Act 2009 s 125(6)(b) (not yet in force).

13 Ie the Criminal Justice Act 2003 s 153: see PARA 32.

14 Coroners and Justice Act 2009 s 125(6)(c) (not yet in force).

15 Ie the Criminal Justice Act 2003 s 164(2): see PARA 144.

16 Coroners and Justice Act 2009 s 125(6)(d) (not yet in force).

17 Ie the Criminal Justice Act 2003 s 269, Sch 21: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 90.

18 Coroners and Justice Act 2009 s 125(6)(e) (not yet in force).

19 Ie the Firearms Act 1968 s 51A: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 662, 664.

20 Coroners and Justice Act 2009 s 125(6)(f) (not yet in force).

21 Ie the Powers of Criminal Courts (Sentencing) Act 2000 ss 110(2), 111(2): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 294; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 772.

22 Coroners and Justice Act 2009 s 125(6)(g) (not yet in force).

23 Ie the Violent Crime Reduction Act 2006 s 29(4) or (6) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

24 Coroners and Justice Act 2009 s 125(6)(h) (not yet in force).

25 Coroners and Justice Act 2009 s 125(2)(a) (not yet in force). Where a court determines the notional determinate term for the purpose of determining in any case:

969 (1) the order to be made under the Powers of Criminal Courts (Sentencing) Act 2000 s 82A (life sentence: determination of tariff: see PARA 33) (Coroners and Justice Act 2009 s 126(2)(a) (not yet in force));

970 (2) the notional minimum term for the purposes of the Criminal Justice Act 2003 s 225(3C) or s 226(3A) (imprisonment or detention for public protection for serious offences: see PARAS 74, 83, 87) (Coroners and Justice Act 2009 s 126(2)(b) (not yet in force));

971 (3) the appropriate custodial term for the purposes of the Criminal Justice Act 2003 s 227(3) (extended sentence for certain violent or sexual offences: persons 18 or over: see PARAS 75, 88) (Coroners and Justice Act 2009 s 126(2)(c) (not yet in force)); or

972 (4) the appropriate term for the purposes of the Criminal Justice Act 2003 s 228(3) (extended sentence for certain violent or sexual offences: persons under 18: see PARA 84) (Coroners and Justice Act 2009 s 126(2)(d) (not yet in force)),

the provisions of s 125(2)-(5) (see the text and notes 26-32) apply for the purposes of determining the notional determinate term in relation to an offence as they apply for the purposes of determining the sentence for an offence: s 126(3) (not yet in force). In s 126 references to the notional determinate term are to the determinate sentence that would have been passed in the case if the need to protect the public and the potential danger of the offender had not required the court to impose a life sentence (in circumstances where the sentence is not fixed by law) or, as the case may be, an extended sentence of imprisonment or detention: s 126(4) (not yet in force). In s 126(4) 'life sentence' has the same meaning as in the Crime (Sentences) Act 1997 Pt 2 Ch 2 (ss 28-34) (see **PRISONS** vol 36(2) (Reissue) PARA 621): Coroners and Justice Act 2009 s 126(5) (not yet in force).

26 le sentencing guidelines which are structured in the way described in the Coroners and Justice Act 2009 s 121(2)-(5) (see PARA 656).

27 Coroners and Justice Act 2009 s 125(2)(b) (not yet in force).

28 le by the Coroners and Justice Act 2009 s 125(1)(a) (see the text and notes 1-5).

29 The Coroners and Justice Act 2009 s 125(3) (except as applied by virtue of s 126(3): see note 25) is subject to any power a court has to impose:

973 (1) a sentence of imprisonment for public protection by virtue of the Criminal Justice Act 2003 s 225(3) (see PARAS 74, 87) (Coroners and Justice Act 2009 s 126(1)(a) (not yet in force));

974 (2) a sentence of detention for public protection by virtue of the Criminal Justice Act 2003 s 226(3) (see PARA 83) (Coroners and Justice Act 2009 s 126(1)(b) (not yet in force));

975 (3) an extended sentence of imprisonment by virtue of the Criminal Justice Act 2003 s 227 (see PARAS 75, 88) (Coroners and Justice Act 2009 s 126(1)(c) (not yet in force)); or

976 (4) an extended sentence of detention by virtue of the Criminal Justice Act 2003 s 228 (see PARA 84) (Coroners and Justice Act 2009 s 126(1)(d) (not yet in force)).

30 Coroners and Justice Act 2009 s 125(3)(a) (not yet in force). Section 125(3)(a) is subject to: (1) the Criminal Justice Act 2003 s 144 (reduction in sentences for guilty pleas: see PARA 623) (Coroners and Justice Act 2009 s 125(5)(a) (not yet in force)); (2) the Serious Organised Crime and Police Act 2005 ss 73, 74 (assistance by defendants: reduction or review of sentence: see PARA 625) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence (Coroners and Justice Act 2009 s 125(5)(b) (not yet in force)); and (3) any rule of law as to the totality of sentences (s 125(5)(c) (not yet in force)).

31 le in accordance with the Coroners and Justice Act 2009 s 121(2) (see PARA 656).

32 Coroners and Justice Act 2009 s 125(3)(b) (not yet in force). Section 125(3)(b) does not apply if the court is of the opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles P's case: s 125(4) (not yet in force). Nothing in s 125 imposes on the court a separate duty, in a case within s 125(3)(b), to impose a sentence which is within the category range: s 125(3) (not yet in force).

UPDATE

658 Duty of court to follow guidelines

NOTES--Coroners and Justice Act 2009 ss 125, 126 in force on 6 April 2010: SI 2010/816.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/10. SENTENCING PRINCIPLES AND GUIDELINES/(5) GUIDELINES BY THE COURT OF APPEAL/659. Guidelines.

(5) GUIDELINES BY THE COURT OF APPEAL

659. Guidelines.

Prior to the establishment of the Sentencing Guidelines Council¹ the authority on sentencing guidelines was the Court of Appeal. The Council has provided² a compendium of guideline judgments in relation to the following areas:

- 2174 (1) generic sentencing principles;
- 2175 (2) homicide and related offences;
- 2176 (3) non-fatal offences against the person;
- 2177 (4) driving offences relating in death;
- 2178 (5) sexual offences;
- 2179 (6) drug offences;
- 2180 (7) public order offences;
- 2181 (8) Theft Acts offences/fraud;
- 2182 (9) offences against public justice;
- 2183 (10) counterfeiting and money laundering;
- 2184 (11) miscellaneous offences³.

¹ See PARA 635.

² See the Sentencing Guidelines Council Guideline *Guideline Judgments--Case Compendium* (2005). The Compendium is updated on the Council website.

³ See the Sentencing Guidelines Council Guideline *Guideline Judgments--Case Compendium* (2005).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(1) REHABILITATION OF OFFENDERS/(i) Principles of Rehabilitation/660. Objectives of the legislation.

11. REHABILITATION AND OFFENDER MANAGEMENT

(1) REHABILITATION OF OFFENDERS

(i) Principles of Rehabilitation

660. Objectives of the legislation.

The objectives of the Rehabilitation of Offenders Act 1974 are to rehabilitate offenders who have not been reconvicted of any serious offence for periods of years and to penalise the unauthorised disclosure of their previous convictions or cautions¹. Subject to a number of specified exceptions², a person who has become a rehabilitated person for the purposes of the Act in respect of a conviction³ is to be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced⁴ for the offence or offences which were the subject of that conviction⁵ and a person who is given a caution⁶ for an offence is to be treated, from the time the caution is spent⁷, for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence⁸.

1 See the long title to the Rehabilitation of Offenders Act 1974, as read with the amendments effected by the Criminal Justice and Immigration Act 2008 Sch 10 (new provision for spent cautions).

2 See PARAS 682-710.

3 For these purposes references to a 'conviction', however expressed, include references to:

977 (1) a conviction by or before a court outside Great Britain (Rehabilitation of Offenders Act 1974 s 1(4)(a)); and

978 (2) any finding (other than a finding linked with a finding of insanity) in any criminal proceedings that a person has committed an offence or done the act or made the omission charged (s 1(4)(b) (amended by the Children Act 1989 Sch 15)).

As to the meaning of 'Great Britain' see PARA 9 note 2. Notwithstanding anything in the Powers of Criminal Courts (Sentencing) Act 2000 s 14 (conviction of a person discharged to be deemed not to be a conviction: see PARA 41) or corresponding Scottish or service law (see the Armed Forces Act 2006 s 187; and **ARMED FORCES**) provisions, a conviction in respect of which an order is made discharging the person concerned absolutely or conditionally is to be treated for these purposes as a conviction and the person in question may become a rehabilitated person in respect of that conviction and the conviction a spent conviction for these purposes accordingly: Rehabilitation of Offenders Act 1974 s 1(4) (amended by the Criminal Justice Act 1991 Sch 11 para 20(b), (c), Sch 13; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 47; and the Armed Forces Act 2006 Sch 16 para 63).

No order made by a court with respect to any person otherwise than on a conviction may be included in any list or statement of that person's previous convictions given or made to any court which is considering how to deal with him in respect of any offence: Rehabilitation of Offenders Act 1974 s 7(5).

4 For these purposes 'sentence' includes any order made by a court in dealing with a person in respect of his conviction of any offence or offences, other than:

979 (1) a surcharge imposed under the Criminal Justice Act 2003 s 161A (see PARA 158) (Rehabilitation of Offenders Act 1974 s 1(3)(za) (added by the Domestic Violence, Crime and Victims Act 2004 Sch 10 para 9));

980 (2) an order for committal or any other order made in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction, or for want of sufficient distress to satisfy any such fine or other sum (which, as from a day to be appointed, will include a reference to circumstances where there is power to use the procedure in the Tribunals, Courts and Enforcement Act 2007 Sch 12 to recover the fine or other sum from a person, but it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by Sch 12 para 50(3))) (Rehabilitation of Offenders Act 1974 s 1(3)(a), (3A) (s 1(3A) prospectively added by the Tribunals, Courts and Enforcement Act 2007 Sch 13 para 38)); and

981 (2) an order dealing with a person in respect of a suspended sentence of imprisonment (Rehabilitation of Offenders Act 1974 s 1(3)(b)).

At the date at which this volume states the law no day had been appointed for the coming into force of the amendments made by the Tribunals, Courts and Enforcement Act 2007.

Where a person has been fined and disqualified from driving there are in fact two sentences: *Munro v Highland Council* 2003 SC 239, 1 Div.

5 Rehabilitation of Offenders Act 1974 s 4(1).

6 For these purposes 'caution' means:

982 (1) a conditional caution, that is to say, a caution given under the Criminal Justice Act 2003 s 22 (conditional cautions for adults: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1044) or under the Crime and Disorder Act 1998 s 66A (conditional cautions for children and young persons: see **CHILDREN AND YOUNG PERSONS**) (Rehabilitation of Offenders Act 1974 s 8A(2)(a) (s 8A, Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 3, 6));

983 (2) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted (Rehabilitation of Offenders Act 1974 s 8A(2)(b) (as so added));

984 (3) a reprimand or warning given under the Crime and Disorder Act 1998 s 65 (reprimands and warnings for persons aged under 18: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1235) (Rehabilitation of Offenders Act 1974 s 8A(2)(c) (as so added));

985 (4) anything corresponding to a caution, reprimand or warning falling within paragraphs (1) to (3) (however described) which is given to a person in respect of an offence under the law of a country outside England and Wales (s 8A(2)(d) (as so added)).

7 As to spent cautions see PARA 662.

8 Rehabilitation of Offenders Act 1974 Sch 2 para 3(1) (as added: see note 6).

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661. Spent convictions.

Where an individual has been convicted¹ of any offence or offences and:

2185 (1) he did not have imposed on him in respect of that conviction a sentence² which is excluded from rehabilitation³; and

2186 (2) he has not had imposed on him⁴ in respect of a subsequent conviction during the rehabilitation period applicable to the first-mentioned conviction a sentence which is excluded from rehabilitation⁵,

then, after the end of the applicable rehabilitation period⁶ that individual, provided he has complied with his sentence⁷, is to be treated as a rehabilitated person in respect of the first-mentioned conviction and that conviction is to be treated as spent⁸.

1 He whether before or after 1 July 1975 (the date on which the Rehabilitation of Offenders Act 1974 was brought into force by s 11(2)). As to the meaning of 'conviction' see PARA 660 note 3.

2 As to the meaning of 'sentence' see PARA 660 note 4.

3 Rehabilitation of Offenders Act 1974 s 1(1)(a). As to the sentences excluded from rehabilitation see PARA 669.

4 He in accordance with the Rehabilitation of Offenders Act 1974 s 6: see PARA 673.

5 Rehabilitation of Offenders Act 1974 s 1(1)(b).

6 He including, where appropriate, any extension under the Rehabilitation of Offenders Act 1974 s 6(4) (see PARA 673) of the period originally applicable to the first-mentioned conviction: s 1(1). As to rehabilitation periods see PARA 670 et seq.

7 These provisions are subject to the Rehabilitation of Offenders Act 1974 s 1(2): see PARA 668.

8 Rehabilitation of Offenders Act 1974 s 1(1).

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662. Spent cautions.

A caution¹ is regarded as a spent caution:

- 2187 (1) in the case of a conditional caution² at the end of the relevant period for the caution³; and
 2188 (2) in any other case, at the time the caution is given⁴.

If the person concerned is subsequently prosecuted and convicted⁵ of the offence in respect of which a conditional caution was given the relevant period for the caution ends at the same time as the rehabilitation period for the offence⁶ and, if the conviction occurs after the end of the specified period⁷, the caution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence⁸.

1 As to the meaning of 'caution' see PARA 660 note 6.

2 See the Rehabilitation of Offenders Act 1974 s 8A(2)(a); and PARA 660 note 6.

3 Rehabilitation of Offenders Act 1974 Sch 2 para 1(1)(a) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6). 'Relevant period for the caution' means (subject to Sch 2 para 1(3): see the text and notes 5-8) the period of three months from the date on which the conditional caution was given: Rehabilitation of Offenders Act 1974 Sch 2 para 1(2) (as so added).

4 Rehabilitation of Offenders Act 1974 Sch 2 para 1(1)(b) (as added: see note 3).

5 As to the meaning of 'conviction' see PARA 660 note 3.

6 Rehabilitation of Offenders Act 1974 Sch 2 para 1(3)(a) (as added: see note 3).

7 I.e. the period mentioned in the Rehabilitation of Offenders Act 1974 Sch 2 para 1(1)(a): see the text and notes 1-3.

8 Rehabilitation of Offenders Act 1974 Sch 2 para 1(3)(b) (as added: see note 3).

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663. Inadmissibility in evidence.

Notwithstanding the provisions of any other enactment or rule of law to the contrary¹:

- 2189 (1) no evidence is admissible in any proceedings before a judicial authority² exercising its jurisdiction or functions in Great Britain³ to prove that any person who has become a rehabilitated person⁴ in respect of a conviction⁵ has committed or been charged with or prosecuted for or convicted of or sentenced⁶ for any offence which was the subject of a spent conviction⁷;
- 2190 (2) no evidence is admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any person who has become a rehabilitated person in respect of a caution⁸ has committed, been charged with or prosecuted for, or been given a caution for the offence⁹; and
- 2191 (3) a person may not, in any such proceedings, be asked, and, if asked, will not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or convictions or a spent caution or any circumstances ancillary thereto¹⁰.

1 These provisions are, however, subject to a number of specified exceptions concerning ongoing judicial processes and the interests of justice and the bringing of defamation actions: see the Rehabilitation of Offenders Act 1974 ss 7, 8; and PARAS 682-686.

2 For the purposes of the Rehabilitation of Offenders Act 1974 ss 4, 7, Sch 2 'proceedings before a judicial authority' includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question:

986 (1) by virtue of any enactment, law, custom or practice (s 4(6)(a), Sch 2 para 2(3) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6));

987 (2) under the rules governing any association, institution, profession, occupation or employment (Rehabilitation of Offenders Act 1974 s 4(6)(b)); or

988 (3) under any provision of an agreement providing for arbitration with respect to questions arising thereunder (s 4(6)(c)).

3 As to the meaning of 'Great Britain' see PARA 9 note 2.

4 As to the meaning of 'rehabilitated person' see PARA 660.

5 As to the meaning of 'conviction' see PARA 660 note 3.

6 As to the meaning of 'sentenced' see PARA 660 note 4.

7 Rehabilitation of Offenders Act 1974 s 8(1)(a). As to spent convictions see PARA 661.

8 As to the meaning of 'caution' see PARA 660 note 6.

9 Rehabilitation of Offenders Act 1974 Sch 2 para 3(1)(a) (as added: see note 2). Nothing in Sch 2 para 3(1) applies in relation to any proceedings for the offence which are not part of the ancillary circumstances relating to the caution (as to which see note 10): Sch 2 para 3(2) (as so added).

10 Rehabilitation of Offenders Act 1974 s 8(1)(b), Sch 2 para 3(1)(b) (as added: see note 2). For the purposes of ss 4, 7 any of the following are 'circumstances ancillary to a conviction':

- 989 (1) the offence or offences which were the subject of that conviction (s 4(5)(a));
- 990 (2) the conduct constituting that offence or those offences (s 4(5)(b)); and
- 991 (3) any process or proceedings preliminary to that conviction, any sentence imposed in respect of that conviction, any proceedings (whether by way of appeal or otherwise) for reviewing that conviction or any such sentence, and anything done in pursuance of or undergone in compliance with any such sentence (s 4(5)(c)).

'Ancillary circumstances' in relation to a caution are any circumstances of:

- 992 (a) the offence which was the subject of the caution or the conduct constituting that offence (Sch 2 para 2(1)(a) (as so added));
- 993 (b) any process preliminary to the caution (including consideration by any person of how to deal with that offence and the procedure for giving the caution) (Sch 2 para 2(1)(b) (as so added));
- 994 (c) any proceedings for that offence which take place before the caution is given (including anything which happens after that time for the purpose of bringing the proceedings to an end) (Sch 2 para 2(1)(c) (as so added));
- 995 (d) any judicial review proceedings relating to the caution (Sch 2 para 2(1)(d) (as so added));
- 996 (e) in the case of a warning under the Crime and Disorder Act 1998 s 65 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1235), anything done in pursuance of or undergone in compliance with a requirement to participate in a rehabilitation programme under s 66(2) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1236) (Rehabilitation of Offenders Act 1974 Sch 2 para 2(1)(d) (as so added)); and
- 997 (f) in the case of a conditional caution (see s 8A(2)(a); and PARA 660 note 6), any conditions attached to the caution or anything done in pursuance of or undergone in compliance with those conditions (Sch 2 para 2(1)(e) (as so added)).

Where the caution relates to two or more offences, references to the 'offence' which was the subject of the caution include a reference to each of the offences concerned: Sch 2 para 2(2) (as so added).

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664. Information as to spent convictions and spent cautions.

Subject to a number of specific exceptions¹, where a question seeking information with regard to a person's previous convictions², cautions³, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority⁴:

2192 (1) the question is to be treated as not relating to spent convictions⁵ or spent cautions⁶ or to any circumstances ancillary to spent convictions or cautions⁷, and the answer thereto may be framed accordingly⁸; and

2193 (2) the person questioned may not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or a spent caution or any circumstances ancillary to a spent conviction or caution in his answer to the question⁹.

¹ See the Rehabilitation of Offenders Act 1974 s 4(4)(a), Sch 2 para 4(a); the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023; and PARA 682 et seq.

² As to the meaning of 'conviction' see PARA 660 note 3.

³ As to the meaning of 'caution' see PARA 660 note 6.

⁴ As to the meaning of 'proceedings before a judicial authority' see PARA 663 note 2.

⁵ As to spent convictions see PARA 661.

⁶ As to spent cautions see PARA 662.

⁷ As to the circumstances ancillary to a conviction or a caution see PARA 663 note 10.

⁸ Rehabilitation of Offenders Act 1974 s 4(2)(a), Sch 2 para 3(3)(a) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6).

⁹ Rehabilitation of Offenders Act 1974 s 4(2)(b), Sch 2 para 3(3)(b) (as added: see note 8).

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665. Non-disclosure of spent convictions and spent cautions.

Subject to a number of specific exceptions¹, any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person does not extend to requiring him to disclose a spent conviction² or a spent caution³ or any circumstances ancillary to a spent conviction or caution⁴, whether the conviction or caution is his own or another's⁵.

1 See the Rehabilitation of Offenders Act 1974 s 4(4)(b), Sch 2 para 4(b); the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023; and PARA 685 et seq.

2 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

3 As to the meaning of 'caution' see PARA 660 note 6. As to spent cautions see PARA 662.

4 As to the circumstances ancillary to a conviction or a caution see PARA 663 note 10.

5 Rehabilitation of Offenders Act 1974 s 4(3)(a), Sch 2 para 3(4) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6).

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666. Protection of employment.

Subject to a number of specific exceptions¹, a conviction² or caution³ which has become spent⁴, or any circumstances ancillary thereto⁵, or any failure to disclose a spent conviction or caution or any such circumstances, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any occupation or employment⁶.

1 See the Rehabilitation of Offenders Act 1974 s 4(4)(b), Sch 2 para 4(b); the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023; and PARA 685 et seq.

2 As to the meaning of 'conviction' see PARA 660 note 3.

3 As to the meaning of 'caution' see PARA 660 note 6.

4 As to spent convictions see PARA 661; as to spent cautions see PARA 662.

5 As to the circumstances ancillary to a conviction or a caution see PARA 663 note 10.

6 Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6).

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667. Unauthorised disclosure of spent convictions and spent cautions.

Any person who, in the course of his official duties anywhere in the United Kingdom¹, has or at any time has had custody of or access to any official record² or the information contained therein, is guilty of an offence if, knowing or having reasonable cause to suspect that any specified information³ or caution information⁴ he has obtained in the course of those duties is specified information or caution information, he discloses it, otherwise than in the course of those duties, to another person⁵. A person who obtains any specified information or caution information from any official record by means of any fraud, dishonesty or bribe is also guilty of an offence⁶.

1 As to the meaning of 'United Kingdom' see PARA 9 note 2.

2 In connection with spent convictions, 'official record' means a record kept for the purposes of its functions by any court, police force, Government department, local or other public authority in Great Britain, or a record kept, in Great Britain or elsewhere, for the purposes of any of Her Majesty's forces, being in either case a record containing information about persons convicted of offences (Rehabilitation of Offenders Act 1974 s 9(1)); and in connection with spent cautions, 'official record' means a record which contains information about persons given a caution for any offence or offences and is kept for the purposes of its functions by any court, police force, Government department or other public authority in England and Wales (s 9A(1)(a) (s 9A added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 4)). As to the meaning of 'conviction' see PARA 660 note 3; and as to the meaning of 'caution' see PARA 660 note 6. As to spent convictions see PARA 661; and as to spent cautions see PARA 662.

3 'Specified information' means information imputing that a named or otherwise identifiable rehabilitated living person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which is the subject of a spent conviction: Rehabilitation of Offenders Act 1974 s 9(1).

4 'Caution information' means information imputing that a named or otherwise identifiable living person has committed, been charged with or prosecuted or cautioned for any offence which is the subject of a spent caution: Rehabilitation of Offenders Act 1974 s 9A(1)(b) (as added: see note 2).

5 Rehabilitation of Offenders Act 1974 ss 9(2), 9A(2) (s 9A as added: see note 2). This is subject to the provisions or terms of any order made under s 9(5) or s 9A(5) (under which the Secretary of State may make such provision as appears to him to be appropriate for excepting the disclosure of specified information or caution information derived from an official record from the provisions of ss 9(2), 9A(2) in such cases or classes of case as may be specified in the order): ss 9(2), 9A(2) (s 9A as so added). At the date at which this volume states the law no such order had been made. A person guilty of an offence under s 9(2) or s 9A(2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: ss 9(6), 9A(6) (s 9(6) amended by the Criminal Justice Act 1982 ss 38, 46; Rehabilitation of Offenders Act 1974 s 9A as so added). As to the standard scale see PARA 142.

Proceedings for an offence under s 9(2) or s 9A(2) may not, in England and Wales, be instituted except by or on behalf of the Director of Public Prosecutions (ss 9(8), 9A(8) (s 9A as so added)), and in any proceedings for such an offence it is a defence for the defendant to show that the disclosure was made to the rehabilitated or named person or to another person at the express request of the rehabilitated or named person or to a person whom he reasonably believed to be the rehabilitated or named person or to another person at the express request of a person whom he reasonably believed to be the rehabilitated or named person (ss 9(3), 9A(3) (s 9A as so added)).

6 Rehabilitation of Offenders Act 1974 ss 9(4), 9A(4) (s 9A as added: see note 2). A person guilty of an offence under s 9(4) or s 9A(4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months (or, where the offence involves caution information, 51 weeks): ss 9(7), 9A(7) (s 9(7) amended by the Criminal Justice Act 1982 ss 38, 46; Rehabilitation of Offenders Act 1974 s 9A as so added).

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668. Compliance with sentence.

A person does not become a rehabilitated person¹ in respect of a conviction² unless he has served or otherwise undergone or complied with any sentence³ imposed on him in respect of that conviction⁴. The following do not, however, prevent a person from becoming a rehabilitated person for these purposes:

- 2194 (1) failure to pay a fine or other sum⁵ adjudged to be paid by or imposed on a conviction, or breach of a condition of a recognisance to keep the peace or be of good behaviour⁶;
- 2195 (2) breach of any condition or requirement applicable in relation to a sentence which renders the person to whom it applies liable to be dealt with for the offence for which the sentence was imposed, or, where the sentence was a suspended sentence of imprisonment, liable to be dealt with in respect of that sentence, whether or not, in any case, he is in fact so dealt with⁷;
- 2196 (3) failure to comply with any requirement of a suspended sentence supervision order⁸; or
- 2197 (4) as from a day to be appointed, breach of any condition of a release supervision order⁹.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 As to the meaning of 'conviction' see PARA 660 note 3.

3 As to the meaning of 'sentence' see PARA 660 note 4.

4 Rehabilitation of Offenders Act 1974 s 1(2). Where in respect of a conviction a person was sentenced to imprisonment with an order under the Criminal Law Act 1977 s 47(1) (partly suspended sentence: now repealed), he is to be treated for these purposes as having served the sentence as soon as he completes service of so much of the sentence as was by that order required to be served in prison: Rehabilitation of Offenders Act 1974 s 1(2A) (added by the Criminal Law Act 1977 Sch 9 para 11).

5 The reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) (see PARA 391 et seq): Rehabilitation of Offenders Act 1974 s 1(2B) (added by the Proceeds of Crime Act 2002 Sch 11 paras 1, 7).

6 Rehabilitation of Offenders Act 1974 s 1(2)(a).

7 Rehabilitation of Offenders Act 1974 s 1(2)(b).

8 Rehabilitation of Offenders Act 1974 s 1(2)(c).

9 Rehabilitation of Offenders Act 1974 s 1(2)(d) (prospectively added by the Crime (Sentences) Act 1997 Sch 4 para 9(1)). At the date at which this volume states the law no day had been appointed for the coming into force of the Rehabilitation of Offenders Act 1974 s 1(2)(d). A 'release supervision order' is an order made under the Crime (Sentences) Act 1997 s 16 (repealed).

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669. Sentences excluded from rehabilitation.

The sentences¹ excluded from rehabilitation² are:

- 2198 (1) a sentence of imprisonment for life³;
- 2199 (2) a sentence of imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding 30 months⁴;
- 2200 (3) a sentence of preventive detention⁵;
- 2201 (4) a sentence of detention⁶ during Her Majesty's pleasure or for life⁷;
- 2202 (5) a sentence of detention⁸ for a term exceeding 30 months passed on young offenders convicted of grave crimes⁹;
- 2203 (6) a sentence of custody for life¹⁰; and
- 2204 (7) a sentence of imprisonment for public protection¹¹, a sentence of detention for public protection¹² or an extended sentence¹³, including any such sentence passed as a result of any corresponding service law provisions¹⁴.

Any other sentence is a 'sentence subject to rehabilitation'¹⁵.

The Secretary of State may by order substitute different periods or terms for any of the periods or terms specified above¹⁶.

1 As to the meaning of 'sentence' see PARA 660 note 4.

2 See PARA 660.

3 Rehabilitation of Offenders Act 1974 s 5(1)(a).

4 Rehabilitation of Offenders Act 1974 s 5(1)(b) (amended by the Criminal Justice Act 1982 Sch 14 para 36; and the Criminal Justice Act 1988 Sch 8 para 9(a)).

5 Rehabilitation of Offenders Act 1974 s 5(1)(c) (amended by the Criminal Justice Act 1982 Sch 16).

6 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 s 90 or s 91 (see PARAS 81, 78), under corresponding Scottish provision or under a corresponding service law provision: Rehabilitation of Offenders Act 1974 s 5(1)(d) (amended by the Armed Forces Act 1976 Sch 9 para 20(4); and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48(1), (2)). The 'corresponding service law provisions' for these purposes (referred to in the Rehabilitation of Offenders Act 1974 as 'corresponding court-martial punishments') are the Armed Forces Act 2006 ss 209, 218 (see **ARMED FORCES**) and references to those provisions include references to the Army Act 1955 s 71A(3), (4), the Air Force Act 1955 s 71A(3), (4) and the Naval Discipline Act 1957 s 43A(3), (4) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 431): Rehabilitation of Offenders Act 1974 s 5(1)(d), (1A) (s 5(1)(d) as so amended; Rehabilitation of Offenders Act 1974 s 5(1A) added by the Armed Forces Act 1976 Sch 9 para 20(4); Rehabilitation of Offenders Act 1974 s 5(1)(d) amended, s 5(1A) substituted, by the Armed Forces Act 2006 Sch 16 para 65).

7 Rehabilitation of Offenders Act 1974 s 5(1)(d) (as amended: see note 6).

8 *Ie* under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78), under corresponding Scottish provision or under a corresponding service law provision: Rehabilitation of Offenders Act 1974 s 5(1)(d) (as amended: see note 6). The 'corresponding service law provision' for these purposes is the Armed Forces Act 2006 s 209 (see **ARMED FORCES**) and references to that provision include references to the Army Act 1955 s 71A(4), the Air Force Act 1955 s 71A(4) or the Naval Discipline Act 1957 s 43A(4) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 431): Rehabilitation of Offenders Act 1974 s 5(1)(d), (1A) (as so amended, added and substituted).

- 9 Rehabilitation of Offenders Act 1974 s 5(1)(d) (as amended: see note 6).
- 10 Rehabilitation of Offenders Act 1974 s 5(1)(e) (added by the Criminal Justice Act 1982 Sch 14 para 36).
- 11 Ie under the Criminal Justice Act 2003 s 225: see PARA 73.
- 12 Ie under the Criminal Justice Act 2003 s 226: see PARA 82.
- 13 Ie under the Criminal Justice Act 2003 s 227 or s 228: see PARAS 75, 84.
- 14 Rehabilitation of Offenders Act 1974 s 5(1)(f) (added by the Criminal Justice Act 2003 Sch 32 para 18(1), (2); amended by the Armed Forces Act 2006 Sch 16 para 65). The 'corresponding service law provisions' for this purpose are the Armed Forces Act 2006 ss 219-222 (see **ARMED FORCES**): Rehabilitation of Offenders Act 1974 s 5(1)(f) (as so added and amended).
- 15 Rehabilitation of Offenders Act 1974 s 5(1).
- 16 Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

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(ii) Periods of Rehabilitation

A. FUNDAMENTAL PROVISIONS

670. Reckoning the rehabilitation period.

The rehabilitation period in relation to a spent conviction¹ is reckoned from the date of the conviction in respect of which the sentence² was imposed³. Where only one sentence is imposed in respect of a conviction, not being a sentence excluded from rehabilitation⁴, the rehabilitation period applicable to the conviction is the period applicable⁵ to that sentence⁶. Where more than one sentence is imposed in respect of a conviction, whether or not in the same proceedings, and none of the sentences is excluded from rehabilitation, then, if the periods applicable to those sentences differ, the rehabilitation period applicable to the conviction is the longer or the longest, as the case may be, of those periods⁷.

1 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

2 As to the meaning of 'sentence' see PARA 660 note 4.

3 Rehabilitation of Offenders Act 1974 s 5(2). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

4 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 5(1): see PARA 669.

5 Ie in accordance with the Rehabilitation of Offenders Act 1974 s 5: see PARAS 671-681.

6 Rehabilitation of Offenders Act 1974 s 6(1). This is subject to s 6(2)-(6): see text and note 7, PARAS 673, 674.

7 Rehabilitation of Offenders Act 1974 s 6(2). This is subject to s 6(3), (3A)-(6): see PARAS 674, 673.

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671. Persons aged eighteen and over.

The rehabilitation period¹ applicable in respect of a sentence² passed on a person aged 18 years or over is calculated as follows³:

- 2205 (1) in respect of a sentence of imprisonment⁴, detention in a young offender institution⁵ or youth custody or corrective training for a term exceeding six months but not exceeding 30 months, ten years⁶;
- 2206 (2) in respect of a sentence of cashiering, discharge with ignominy or dismissal with disgrace from Her Majesty's service⁷, ten years⁸;
- 2207 (3) in respect of a sentence of imprisonment, detention in a young offender institution or youth custody for a term not exceeding six months, seven years⁹;
- 2208 (4) in respect of a sentence of dismissal from Her Majesty's service¹⁰, seven years¹¹;
- 2209 (5) in respect of any sentence of detention (or any sentence of service detention¹² or any sentence of detention corresponding to such a sentence) in respect of a conviction in service disciplinary proceedings¹³, five years¹⁴; and
- 2210 (6) in respect of a fine or any other sentence subject to rehabilitation¹⁵, five years¹⁶.

1 As to the rehabilitation period generally see PARA 670.

2 As to the meaning of 'sentence' see PARA 660 note 4.

3 Rehabilitation of Offenders Act 1974 s 5(2)(a), Table A (amended by the Criminal Justice Act 1991 Sch 8 para 5, Sch 12 para 22).

4 For these purposes consecutive terms of imprisonment or detention under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Armed Forces Act 2006 s 209 (see **ARMED FORCES**) and terms which are wholly or partly concurrent (being terms of imprisonment or detention imposed in respect of offences of which a person was convicted in the same proceedings) are to be treated as a single term: Rehabilitation of Offenders Act 1974 s 5(9)(b) (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48(1), (9); and by the Armed Forces Act 2006 Sch 16 para 65). No account is to be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed: Rehabilitation of Offenders Act 1974 s 5(9)(c). A sentence imposed by a court outside Great Britain is to be treated as a sentence of that one of the descriptions mentioned in s 5 (see the text and notes 1-3, 5-6; and PARA 669 et seq) which most nearly corresponds to the sentence imposed: s 5(9)(d). As to the meaning of 'Great Britain' see PARA 9 note 2.

5 As to detention in a young offender institution see PARA 85.

6 Rehabilitation of Offenders Act 1974 s 5(2)(a), Table A entry 1 (amended by the Criminal Justice Act 1982 Sch 14 para 37; and the Criminal Justice Act 1988 Sch 8 para 9(b)). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

7 As to the rehabilitation of persons dealt with in service disciplinary proceedings see the Rehabilitation of Offenders Act 1974 ss 2, 7(2)(b); PARA 683; and **ARMED FORCES** vol 2(2) (Reissue) PARA 216.

8 Rehabilitation of Offenders Act 1974 Table A entry 2.

9 Rehabilitation of Offenders Act 1974 Table A entry 3 (amended by the Criminal Justice Act 1982 Sch 14 para 37; and the Criminal Justice Act 1988 Sch 8 para 9(b)).

- 10 See note 7.
- 11 Rehabilitation of Offenders Act 1974 Table A entry 4.
- 12 Ie within the meaning of the Armed Forces Act 2006: see s 374; and **ARMED FORCES**.
- 13 See note 7.
- 14 Rehabilitation of Offenders Act 1974 Table A entry 5 (amended by the Armed Forces Act 2006 Sch 16 para 65).
- 15 Ie a fine or any other sentence subject to the Rehabilitation of Offenders Act 1974 not being a sentence to which s 5(2), Table B or s 5(3)-(8) (see PARA 672 et seq) applies: Rehabilitation of Offenders Act 1974 s 5(2) (a), Table A entry 6 (amended by the Youth and Criminal Evidence Act 1999 Sch 4 para 6(1), (2)). The appropriate period where a fine is imposed on an offender, with imprisonment in default of payment, is the shorter one relating to the fine: see *Arif v Excess Insurance Group Ltd* 1982 SLT 183, Ct of Sess.
- 16 Rehabilitation of Offenders Act 1974 Table A entry 6 (as amended: see note 15).

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672. Young offenders.

The rehabilitation period¹ applicable to a sentence² imposed on a person who was under 18 years of age at the date of his conviction³ is in general half the period so applicable in the case of a person aged 18 or over⁴; however, special provision is made in respect of young offenders sentenced to certain sentences, the rehabilitation periods for which are calculated as follows⁵:

- 2211 (1) in respect of a custodial order under service law⁶ where the maximum period of detention specified in the order is more than six months, seven years⁷;
- 2212 (2) in respect of a sentence of detention for a term exceeding six months but not exceeding 30 months⁸, five years⁹;
- 2213 (3) in respect of a sentence of detention for a term not exceeding six months¹⁰, three years¹¹;
- 2214 (4) in respect of an order for detention in a detention centre¹², three years¹³;
- 2215 (5) in respect of a custodial order under service law¹⁴ where the maximum period of detention specified in the order is six months or less, three years¹⁵.

1 As to the rehabilitation period generally see PARA 670.

2 As to the meaning of 'sentence' see PARA 660 note 4.

3 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

4 Rehabilitation of Offenders Act 1974 s 5(2)(a) (amended by the Criminal Justice Act 1991 Sch 8 para 5(a), Sch 12 para 22). As to the periods for persons aged 18 and over see PARA 671. The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms and may substitute a different age for the age of 18: Rehabilitation of Offenders Act 1974 s 5(11). At the date at which this volume states the law no such order had been made.

5 See the Rehabilitation of Offenders Act 1974 s 5(2)(b), Table B: see the text and notes 7-15.

6 I.e. a custodial order under the Army Act 1955 s 71AA or Sch 5A, the Air Force Act 1955 s 71AA or Sch 5A or the Naval Discipline Act 1957 s 43AA or Sch 4A: see **ARMED FORCES** vol 2(2) (Reissue) PARAS 431-432.

7 Rehabilitation of Offenders Act 1974 s 5(2)(b), Table B entry 2 (added by the Armed Forces Act 1976 Sch 9 para 21); Rehabilitation of Offenders Act 1974 s 5(2)(b), Table B entry 3 (added by the Armed Forces Act 1981 Sch 4 para 2).

8 I.e. a sentence passed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Armed Forces Act 2006 s 209 (see **ARMED FORCES**). These provisions also apply in relation to a sentence under the Army Act 1955 s 71A(4), the Air Force Act 1955 s 71A(4) or the Naval Discipline Act 1957 s 43A(4) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 431) as they apply to a sentence under the Armed Forces Act 2006 s 209: Rehabilitation of Offenders Act 1974 s 5(2A) (added by the Armed Forces Act 2006 Sch 16 para 65).

The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

9 Rehabilitation of Offenders Act 1974 Table B entry 4 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48; and the Armed Forces Act 2006 Sch 16 para 65). See note 8.

10 I.e. a sentence passed under the Powers of Criminal Courts (Sentencing) Act 2000 s 91 (see PARA 78) or the Armed Forces Act 2006 s 209 (see **ARMED FORCES**). These provisions also apply in relation to a sentence under

the Army Act 1955 s 71A(4), the Air Force Act 1955 s 71A(4) or the Naval Discipline Act 1957 s 43A(4) (see **ARMED FORCES** vol 2(2) (Reissue) PARA 431): see note 8.

11 Rehabilitation of Offenders Act 1974 Table B entry 5 (amended by the Armed Forces Act 2006 Sch 16 para 65). See note 8.

12 Is an order made under the Criminal Justice Act 1961 s 4 (repealed) or the Criminal Justice Act 1982 s 4 (repealed).

13 Rehabilitation of Offenders Act 1974 Table B entry 6 (amended by the Criminal Justice Act 1982 Sch 14 para 37).

14 See note 6.

15 Rehabilitation of Offenders Act 1974 Table B entry 7 (added by the Armed Forces Act 1976 Sch 9 para 21); Rehabilitation of Offenders Act 1974 Table B entry 8 (added by the Armed Forces Act 1981 Sch 4 para 2).

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673. Conviction of offence during rehabilitation period.

Where during the rehabilitation period¹ applicable to a conviction²:

- 2216 (1) the person convicted is convicted of a further offence³; and
- 2217 (2) no sentence⁴ excluded from rehabilitation⁵ is imposed on him in respect of the later conviction⁶,

if the rehabilitation period applicable⁷ to either of the convictions would end earlier than the period so applicable in relation to the other, the rehabilitation period which would⁸ end the earlier is extended so as to end at the same time as the other rehabilitation period⁹.

Where the rehabilitation period applicable to a conviction is the period applicable¹⁰ to an order imposing on a person any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to another conviction is not extended¹¹ by reference to that period¹². However, if any other sentence is imposed in respect of the first-mentioned conviction for which a rehabilitation period is prescribed¹³, the rehabilitation period applicable to another conviction is, where appropriate, extended¹⁴ by reference to the rehabilitation period applicable¹⁵ to that sentence or, where more than one such sentence is imposed, by reference to the longer or longest of the periods so applicable to those sentences, as if the period in question were the rehabilitation period applicable to the first-mentioned conviction¹⁶.

1 As to the rehabilitation period generally see PARA 670.

2 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

3 Rehabilitation of Offenders Act 1974 s 6(4)(a). For these purposes, the following convictions are to be disregarded:

998 (1) any conviction in England and Wales of a summary offence or of a scheduled offence (within the meaning of the Magistrates' Courts Act 1980 s 22) tried summarily in pursuance of s 22(2) (summary trial where value involved is small) (Rehabilitation of Offenders Act 1974 s 6(6)(a) (amended by the Criminal Law Act 1977 Sch 12; and the Magistrates' Courts Act 1980 Sch 7 para 134): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1114; **MAGISTRATES** vol 29(2) (Reissue) PARA 661);

999 (2) any conviction in Scotland of an offence which is not excluded from the jurisdiction of inferior courts of summary jurisdiction by virtue of the Summary Jurisdiction (Scotland) Act 1954 s 4 (repealed) (see now the Criminal Procedure (Scotland) Act 1975 s 285) (Rehabilitation of Offenders Act 1974 s 6(6)(b));

1000 (3) any conviction in service disciplinary proceedings for an offence under any of the Army Act 1955 ss 29, 29A, 33, 34, 34A, 35, 36, 38, 39, 42, 43, 43A, 44, 44A, 44B, 45-48, 50, 51, 52, 54-57, 61-62, 69 (including a connected inchoate offence under s 68 or s 68A), the Air Force Act 1955 ss 29, 29A, 33, 34, 34A, 35, 36, 38, 39, 42, 43, 43A, 44, 44A, 44B, 45-48, 50, 51, 52, 54-57, 61-62, 69 (including a connected inchoate offence under s 68 or s 68A), the Naval Discipline Act 1957 ss 6, 7, 11, 12, 12A, 13, 14, 14A, 17, 18, 21, 22, 25, 27, 28, 29, 29A, 29B, 30-33, 33A-33C, 34A, 35, 35A, 38, 39 (including a connected inchoate offence under s 40 or s 41) or any service offence within the meaning of the Armed Forces Act 2006 (see s 50(2); and **ARMED FORCES**) except one punishable in the case of an offender aged 18 or over with imprisonment for more than two years (Rehabilitation of Offenders Act 1974 s 6(6)(bb), Sch 1 (s 6(6)(bb), Sch 1 added by the Armed Forces Act 1996 s 13(3), (6), Sch 4; Rehabilitation of Offenders Act 1974 s 6(6)(bb)

amended by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 2; Rehabilitation of Offenders Act 1974 Sch 1 amended by the Armed Forces Act 2006 Sch 16 para 66)); and

1001 (4) any conviction by or before a court outside Great Britain of an offence in respect of conduct which, if it had taken place in any part of Great Britain, would not have constituted an offence under the law in force in that part of Great Britain (Rehabilitation of Offenders Act 1974 s 6(6)(c)).

As to the meaning of 'Great Britain' see PARA 9 note 2.

4 As to the meaning of 'sentence' see PARA 660 note 4.

5 le under the Rehabilitation of Offenders Act 1974 s 5(1): see PARA 669.

6 Rehabilitation of Offenders Act 1974 s 6(4)(b).

7 le in accordance with the Rehabilitation of Offenders Act 1974 s 6: see PARAS 670, 674.

8 le apart from the Rehabilitation of Offenders Act 1974 s 6(4).

9 Rehabilitation of Offenders Act 1974 s 6(4).

10 le in accordance with the Rehabilitation of Offenders Act 1974 s 5(8): see PARA 681.

11 le by virtue of the Rehabilitation of Offenders Act 1974 s 6(4).

12 Rehabilitation of Offenders Act 1974 s 6(5).

13 le by the Rehabilitation of Offenders Act 1974 s 5(1)-(7): see PARAS 669 et seq, 674-680.

14 le under the Rehabilitation of Offenders Act 1974 s 6(4).

15 le in accordance with the Rehabilitation of Offenders Act 1974 s 5: see PARAS 669 et seq, 674-681.

16 Rehabilitation of Offenders Act 1974 s 6(5).

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674. Extension of rehabilitation period for breach of discharge or order.

Where:

2218 (1) in respect of a conviction¹ a person was conditionally discharged or a community rehabilitation order² was made and, after the end of the rehabilitation period applicable to the conviction³, he is dealt with, in consequence of a breach of conditional discharge or a breach of the order, for the offence for which the order for conditional discharge or probation was made⁴; or

2219 (2) as from a day to be appointed, an order is made⁵ requiring an offender to attend meetings in respect of a conviction for loitering or soliciting and after the end of the rehabilitation period applicable to the conviction the offender is dealt with again for the offence for which that order was made⁶,

then, if the rehabilitation period applicable to the conviction⁷ (taking into account any sentence⁸ imposed when he is so dealt with) ends later than the rehabilitation period previously applicable to the conviction, he is to be treated as not having become a rehabilitated person⁹ in respect of that conviction; and the conviction is for those purposes to be treated as not having become spent, in relation to any period falling before the end of the new rehabilitation period¹⁰.

1 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

2 Probation orders under the Powers of Criminal Courts (Sentencing) Act 2000 s 41 were renamed 'community rehabilitation orders' by the Criminal Justice and Court Services Act 2000 s 43: see now PARA 167.

3 In accordance with the Rehabilitation of Offenders Act 1974 s 6(1) or (2): see PARA 670.

4 Rehabilitation of Offenders Act 1974 s 6(3) (amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 48, 50 (subject to a saving in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(c)(xii), (3))).

5 In the Street Offences Act 1959 s 1(2A) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

6 Rehabilitation of Offenders Act 1974 s 6(3A)(a), (b) (s 6(3A) prospectively added by the Policing and Crime Act 2009 s 18(1), (3)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

7 In accordance with the Rehabilitation of Offenders Act 1974 s 6(2): see PARA 670.

8 As to the meaning of 'sentence' see PARA 660 note 4.

9 As to the meaning of 'rehabilitated person' see PARA 660.

10 Rehabilitation of Offenders Act 1974 s 6(3), (3A)(c) (as amended and prospectively added: see notes 4, 6). These provisions are without prejudice to the Rehabilitation of Offenders Act 1974 s 6(2) (see PARA 670): see s 6(3), (3A) (as so amended and prospectively added).

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B. REHABILITATION PERIODS FOR SPECIFIC SENTENCES OR ORDERS

675. Absolute and conditional discharge and binding over.

The rehabilitation period¹ applicable to an order discharging a person absolutely for an offence is six months from the date of the conviction². Where in respect of a conviction a person was conditionally discharged, or bound over to keep the peace or be of good behaviour, the rehabilitation period applicable to the sentence³ is one year from the date of conviction or a period beginning with that date and ending when the order for conditional discharge or, as the case may be, the recognisance or bond of caution to keep the peace or be of good behaviour ceases or ceased to have effect, whichever is the longer⁴.

1 As to the rehabilitation period generally see PARA 670.

2 Rehabilitation of Offenders Act 1974 s 5(3). As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661. The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: s 5(11)(a). At the date at which this volume states the law no such order had been made.

3 As to the meaning of 'sentence' see PARA 660 note 4.

4 Rehabilitation of Offenders Act 1974 s 5(4) (amended by the Criminal Justice and Public Order Act 1994 Sch 9 para 11(1)(b), (2), Sch 11). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

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676. Community orders.

Where, in respect of a conviction¹, a community order², a community rehabilitation order³, a service community order or overseas community order⁴ was made, the rehabilitation period⁵ applicable to the sentence⁶ is:

2220 (1) in the case of a person aged 18 years or over at the date of his conviction, five years from the date of his conviction⁷; and

2221 (2) in the case of a person aged under the age of 18 years at the date of his conviction, two and a half years from the date of conviction or a period beginning with the date of conviction and ending when the order in question ceases or ceased to have effect whichever is the longer⁸.

Where in respect of a conviction a supervision order⁹ or a youth rehabilitation order¹⁰, or a community supervision order under service law¹¹, was imposed, the rehabilitation period applicable to the sentence is one year from the date of conviction or a period beginning with that date and ending when the order or requirement ceases or ceased to have effect, whichever is the longer¹².

1 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

2 I.e. an order under the Criminal Justice Act 2003 s 177: see PARA 168 et seq.

3 Probation orders under the Powers of Criminal Courts (Sentencing) Act 2000 s 41 were renamed 'community rehabilitation orders' by the Criminal Justice and Court Services Act 2000 s 43: see now PARA 167.

4 I.e. under the Armed Forces Act 2006 ss 178, 182: see **ARMED FORCES**.

5 As to the rehabilitation period generally see PARA 670.

6 As to the meaning of 'sentence' see PARA 660 note 4.

7 Rehabilitation of Offenders Act 1974 s 5(4A)(a) (s 5(4A) added by the Criminal Justice and Public Order Act 1994 Sch 9 para 11(1)(c), (2), Sch 11; and amended by the Criminal Justice and Court Services Act 2000 Sch 7 paras 48, 49; and the Criminal Justice Act 2003 Sch 32 para 18(1), (3) (subject to a saving in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(b), (c)(xiii), (3)); and by the Armed Forces Act 2006 Sch 16 para 65).

The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

8 Rehabilitation of Offenders Act 1974 s 5(4A)(b) (as added and amended: see note 7). For these purposes references to the period during which a probation (community rehabilitation) or supervision order under the Powers of Criminal Courts (Sentencing) Act 2000 is or was in force include references to any period during which any such order, or corresponding Northern Ireland provisions, being an order made directly or indirectly in substitution for the first-mentioned order, is or was in force: Rehabilitation of Offenders Act 1974 s 5(10) (amended by the Children Act 1989 Sch 15; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48(1), (10)).

9 I.e. a supervision order under the Powers of Criminal Courts (Sentencing) Act 2000 s 63(1): see PARA 250. These orders are abolished in respect of offences committed on or after 30 November 2009 and replaced by

youth rehabilitation orders: see PARA 163; and the text and note 10. Note that these provisions (ie the Rehabilitation of Offenders Act 1974 s 5(5)) also apply in the case of an order committing the person convicted to the care of a fit person under the Children and Young Persons Act 1933 s 57 (repealed), to a supervision order under any provision of the Children and Young Persons Act 1933 or the Children and Young Persons Act 1963, and to corresponding Scottish orders: see the Rehabilitation of Offenders Act 1974 s 5(5)(a)-(d), (f) (s 5(5) as amended: see note 12).

10 Ie an order under the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8): see PARA 202 et seq.

11 Ie under the Army Act 1955 Sch 5A, the Air Force Act 1955 Sch 5A or the Naval Discipline Act 1957 Sch 4A: see **ARMED FORCES** vol 2(2) (Reissue) PARAS 431-432.

12 Rehabilitation of Offenders Act 1974 s 5(5) (amended by the Armed Forces Act 1976 Sch 9 para 21; the Children Act 1989 Sch 15; the Armed Forces Act 1991 Sch 3; the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48(1), (6), Sch 11 para 13; and the Criminal Justice and Immigration Act 2008 Sch 4 Pt 1). See note 8.

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677. Referral orders.

Where, in respect of a conviction¹, a referral order² is made in respect of the person convicted, the rehabilitation period³ applicable to the sentence⁴ is:

- 2222 (1) if a youth offender contract takes effect⁵ between him and a youth offender panel⁶, the period beginning with the date of conviction and ending on the date when⁷ the contract ceases to have effect⁸; and
- 2223 (2) if no such contract takes effect, the period beginning with the date of conviction and having the same length as the period for which such a contract would⁹ have had effect had one so taken effect¹⁰.

Where, in respect of a person convicted for an offence committed before or after a referral to a youth offender panel a court makes an order¹¹ extending the period for which a youth offender contract has effect, the rehabilitation period applicable to the sentence is:

- 2224 (a) if a youth offender contract takes effect¹² between the offender and a youth offender panel, the period beginning with the date of conviction and ending on the date when¹³ the contract ceases to have effect¹⁴; and
- 2225 (b) if no such contract takes effect, the period beginning with the date of conviction and having the same length as the period for which, in accordance with the order, such a contract would have had effect had one so taken effect¹⁵.

As from a day to be appointed the rehabilitation period applicable to an order¹⁶ requiring an offender to attend meetings following a conviction for loitering or soliciting for the purposes of prostitution is six months from the date of conviction for the offence in respect of which the order is made¹⁷.

1 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

2 Ie within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000: see s 16(2), (3); and PARAS 344-345.

3 As to the rehabilitation period generally see PARA 670.

4 As to the meaning of 'sentence' see PARA 660 note 4.

5 Ie under the Powers of Criminal Courts (Sentencing) Act 2000 s 23: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1297.

6 As to youth offender panels see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1295 et seq.

7 Ie in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 24: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1298.

8 Rehabilitation of Offenders Act 1974 s 5(4B)(a) (s 5(4B), (4C) added by the Youth Justice and Criminal Evidence Act 1999 Sch 4 para 6(1), (3); the Rehabilitation of Offenders Act 1974 s 5(4B)(a), (4C)(a) amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48(1), (4), (5)). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

9 le ignoring the Powers of Criminal Courts (Sentencing) Act 2000 s 28, Sch 1 paras 11, 12: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1304.

10 Rehabilitation of Offenders Act 1974 s 5(4B)(b) (as added: see note 8).

11 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 28, Sch 1 para 11 or 12: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1304.

12 le under the Powers of Criminal Courts (Sentencing) Act 2000 s 23: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1297.

13 le in accordance with the Powers of Criminal Courts (Sentencing) Act 2000 s 24: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1298.

14 Rehabilitation of Offenders Act 1974 s 5(4C)(a) (as added and amended: see note 8).

15 Rehabilitation of Offenders Act 1974 s 5(4C)(b) (as added: see note 8).

16 le an order under the Street Offences Act 1959 s 1(2A) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**).

17 Rehabilitation of Offenders Act 1974 s 5(4D) (prospectively added by the Policing and Crime Act 2009 s 18(1), (2)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

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678. Attendance centre orders.

Where an attendance centre order¹ was made in respect of a conviction² the rehabilitation period³ applicable to the sentence⁴ is a period beginning with the date of conviction and ending one year after the date on which the order ceases or ceased to have effect⁵.

1 Is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 60: see PARA 267. These orders are prospectively abolished and replaced by youth rehabilitation orders: see PARA 163. Note that these provisions (ie the Rehabilitation of Offenders Act 1974 s 5(6)) also apply in the case of an order committing the person convicted to custody in a remand home under the Children and Young Persons Act 1933 s 54 (repealed), an approved school order under s 57 (repealed) and a secure training order under the Criminal Justice and Public Order Act 1994 s 1 (repealed): see the Rehabilitation of Offenders Act 1974 s 5(6)(a), (b), (d) (s 5(6) as amended: see note 5).

2 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

3 As to the rehabilitation period generally see PARA 670.

4 As to the meaning of 'sentence' see PARA 660 note 4.

5 Rehabilitation of Offenders Act 1974 s 5(6) (amended by the Criminal Justice and Public Order Act 1994 Sch 10 para 30; and the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48(1), (7)). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

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679. Detention and training orders.

Where a detention and training order¹ was made in respect of a conviction² the rehabilitation period³ applicable to the sentence⁴ is:

2226 (1) in the case of a person aged 15 years or over at the date of his conviction, five years if the order was, and three and a half years if the order was not, for a term exceeding six months⁵;

2227 (2) in the case of a person aged under 15 years at the date of his conviction, a period beginning with that date and ending one year after the date on which the order ceases to have effect⁶.

1 Is an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 100 (see PARA 89) or the Armed Forces Act 2006 s 211 (see **ARMED FORCES**).

2 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

3 As to the rehabilitation period generally see PARA 670.

4 As to the meaning of 'sentence' see PARA 660 note 4.

5 Rehabilitation of Offenders Act 1974 s 5(6A)(a) (s 5(6A) added by the Crime and Disorder Act 1998 Sch 8 para 35; amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 48; and by the Armed Forces Act 2006 Sch 16 para 65).

The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

6 Rehabilitation of Offenders Act 1974 s 5(6A)(b) (as added and amended: see note 5).

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680. Hospital orders.

Where in respect of a conviction¹ a hospital order², with or without a restriction order, was made, the rehabilitation period³ applicable to the sentence⁴ is the period of five years from the date of the conviction or a period beginning with that date and ending two years after the date on which the hospital order ceases or ceased to have effect, whichever is the longer⁵.

1 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

2 I.e. under the Mental Health Act 1983 Pt III (ss 35-55): see PARA 332 et seq; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 491.

3 As to the rehabilitation period generally see PARA 670.

4 As to the meaning of 'sentence' see PARA 660 note 4.

5 Rehabilitation of Offenders Act 1974 s 5(7) (amended by the Mental Health (Amendment) Act 1982 Sch 3 para 49; and the Mental Health Act 1983 Sch 4 para 39). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11) (a). At the date at which this volume states the law no such order had been made.

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681. Disqualifications and prohibitions.

Where in respect of a conviction¹ an order was made imposing on the person convicted any disqualification, disability, prohibition or other penalty, the rehabilitation period² applicable to the sentence³ is a period beginning with the date of conviction and ending on the date on which the disqualification, disability, prohibition or penalty, as the case may be, ceases or ceased to have effect⁴.

1 As to the meaning of 'conviction' see PARA 660 note 3. As to spent convictions see PARA 661.

2 As to the rehabilitation period generally see PARA 670.

3 As to the meaning of 'sentence' see PARA 660 note 4.

4 Rehabilitation of Offenders Act 1974 s 5(8). The Secretary of State may by order substitute different periods or terms for any of the specified periods or terms: Rehabilitation of Offenders Act 1974 s 5(11)(a). At the date at which this volume states the law no such order had been made.

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(iii) Limitations and Restrictions on Statutory Rehabilitation Provisions

682. Pardons, enforcement and other ongoing processes.

Although a person who is rehabilitated in respect of a conviction¹ is to be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced² for the offence or offences which were the subject of that conviction³, such rehabilitation does not affect:

- 2228 (1) any right of Her Majesty, by virtue of Her Royal prerogative or otherwise, to grant a free pardon, to quash any conviction or sentence, or to commute any sentence⁴;
- 2229 (2) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction⁵;
- 2230 (3) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction⁶; or
- 2231 (4) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject, otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the applicable rehabilitation period⁷.

Although a person who is rehabilitated in respect of caution is to be treated, from the time the caution is spent⁸, for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given a caution for the offence, nothing in the rehabilitation provisions⁹ affects the operation of the caution in question¹⁰ or the operation of any enactment by virtue of which, in consequence of any caution, a person is subject to any disqualification, disability, prohibition or other restriction or effect, the period of which extends beyond the rehabilitation period applicable to the caution¹¹.

1 As to the meaning of 'conviction' see PARA 660 note 3.

2 As to the meaning of 'sentences' see PARA 660 note 4.

3 See the Rehabilitation of Offenders Act 1974 s 4(1); and PARA 660.

4 Rehabilitation of Offenders Act 1974 s 7(1)(a).

5 Rehabilitation of Offenders Act 1974 s 7(1)(b).

6 Rehabilitation of Offenders Act 1974 s 7(1)(c). As to spent convictions see PARA 661.

7 Rehabilitation of Offenders Act 1974 s 7(1)(d). As to the applicable rehabilitation period see s 6; and PARAS 670, 674.

8 As to spent cautions see PARA 662.

9 ie the Rehabilitation of Offenders Act 1974 Sch 2 para 3 (see PARAS 663-666).

10 Rehabilitation of Offenders Act 1974 Sch 2 para 5(a) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6).

11 Rehabilitation of Offenders Act 1974 Sch 2 para 5(b) (as added: see note 10).

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683. Civil and criminal proceedings.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions² or cautions³ or to circumstances ancillary thereto⁴:

- 2232 (1) in any criminal proceedings before a court in Great Britain (including any appeal or reference in a criminal matter)⁵;
- 2233 (2) in any service disciplinary proceedings⁶ or in any proceedings on appeal from any service disciplinary proceedings⁷;
- 2234 (3) in any proceedings⁸ relating to the making and operation of notification and other orders in connection with sexual offences, or on appeal from any such proceedings⁹;
- 2235 (4) in any proceedings relating to adoption, the marriage or the formation of a civil partnership by any minor, the exercise of the inherent jurisdiction of the High Court with respect to minors or the provision by any person of accommodation, care or schooling for minors¹⁰;
- 2236 (5) in any proceedings brought under the Children Act 1989¹¹;
- 2237 (6) in any proceedings relating to the variation or discharge of a supervision order¹² or a youth rehabilitation order¹³, or on appeal from any such proceedings¹⁴;
- 2238 (7) in any proceedings in which he is a party or a witness, provided that, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents, notwithstanding the rehabilitation provisions¹⁵, to the determination of the issue or, as the case may be, the admission or requirement of the evidence¹⁶; or
- 2239 (8) as from a day to be appointed, in any proceedings brought¹⁷ in connection with the proceeds of criminal memoirs¹⁸.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663.

2 As to the meaning of 'conviction' see PARA 660 note 3.

3 As to the meaning of 'caution' see PARA 660 note 6. These provisions (ie the Rehabilitation of Offenders Act 1974 s 7(2) (apart from s 7(2)(b), (d)) (see the text and notes 6-7, 12-14)) apply to the determination of any issue, and the admission or requirement of any evidence, relating to a person's previous cautions or to ancillary circumstances (see note 4) as they apply to matters relating to a person's previous convictions and circumstances ancillary thereto: Sch 2 para 6(2) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6).

4 As to the circumstances ancillary to a conviction or a caution see PARA 663 note 10.

5 Rehabilitation of Offenders Act 1974 s 7(2)(a), Sch 2 para 6(1) (as added: see note 3).

6 For the purposes of the Rehabilitation of Offenders Act 1974 'service disciplinary proceedings' means any of:

1002 (1) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 1 et seq) (whether before a court-martial or before any other court or person authorised thereunder to award a punishment in respect of any offence) (Rehabilitation of Offenders Act 1974 s 2(5)(a));

- 1003 (2) any proceedings under any Act previously in force corresponding to any of the Acts mentioned in head (1) above (s 2(5)(b));
- 1004 (3) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 520 et seq) (Rehabilitation of Offenders Act 1974 s 2(5)(bb) (added by the Armed Forces Act 1976 Sch 9 para 20(3)));
- 1005 (4) any proceedings under any corresponding enactment or law applying to a force, other than a home force, to which the Visiting Forces (British Commonwealth) Act 1933 s 4 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 255) applies or applied at the time of the proceedings, being proceedings in respect of a member of a home force who is or was at that time attached to the first-mentioned force under that section (Rehabilitation of Offenders Act 1974 s 2(5)(c)); and
- 1006 (5) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (see s 50(2); and **ARMED FORCES**) (except proceedings before a civilian court within the meaning of that Act (see s 374; and **ARMED FORCES**)) (Rehabilitation of Offenders Act 1974 s 2(5)(za) (added by the Armed Forces Act 2006 Sch 16 para 64(a))),

whether in any event those proceedings take place in Great Britain or elsewhere.

The provisions of the Armed Forces Act 2006 s 376(1)-(3) ('conviction' and 'sentence' in relation to summary hearings and the SAC: see **ARMED FORCES**) apply for the purposes of the Rehabilitation of Offenders Act 1974 as they apply for the purposes of the Armed Forces Act 2006: Rehabilitation of Offenders Act 1974 s 2(6) (added by the Armed Forces Act 2006 Sch 16 para 64(b)).

- 7 Rehabilitation of Offenders Act 1974 s 7(2)(b). This provision does not apply to a spent caution: see note 3.
- 8 Ie under the Sexual Offences Act 2003 Pt 2 (ss 80-136) (see PARA 557 et seq).
- 9 Rehabilitation of Offenders Act 1974 s 7(2)(bb) (added by the Sexual Offences Act 2003 Sch 6 para 19).
- 10 Rehabilitation of Offenders Act 1974 s 7(2)(c) (s 7(2)(c), (d) substituted, s 7(2)(cc) added, by the Children Act 1989 Sch 13 para 35; Rehabilitation of Offenders Act 1974 s 7(2)(c) amended by the Civil Partnership Act 2004 Sch 27 para 53).
- 11 Rehabilitation of Offenders Act 1974 s 7(2)(cc) (as added: see note 10).
- 12 Ie under the Powers of Criminal Courts (Sentencing) Act 2000: see PARA 263.
- 13 Ie under the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8): see PARA 202 et seq.
- 14 Rehabilitation of Offenders Act 1974 s 7(2)(d) (as substituted (see note 10); amended by the Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 49; prospectively substituted by the Criminal Justice and Immigration Act 2008 Sch 4 para 22). At the date at which this volume states the law no day had been appointed for the coming into force of the substitution effected by the Criminal Justice and Immigration Act 2008. This provision does not apply to a spent caution: see note 3.
- 15 Ie notwithstanding the Rehabilitation of Offenders Act 1974 s 4(1): see PARA 660.
- 16 Rehabilitation of Offenders Act 1974 s 7(2)(f).
- 17 Ie under the Coroners and Justice Act 2009 Pt 7 (ss 155-172).
- 18 Rehabilitation of Offenders Act 1974 s 7(2)(h) (prospectively added by the Coroners and Justice Act 2009 s 158(1)). At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

UPDATE

683 Civil and criminal proceedings

NOTE 14--Day appointed is 30 November 2009: SI 2009/3074.

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684. Interests of justice.

If at any stage in any proceedings before a judicial authority¹ in Great Britain², not being proceedings to which the rehabilitation principle and the concomitant exclusions of evidence and questioning as to spent convictions and cautions³ do not apply⁴ or (in relation to a spent conviction⁵) proceedings to which the special provisions relating to defamation actions⁶ apply, the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or spent cautions⁷ or to circumstances ancillary thereto⁸, that authority may admit or, as the case may be, require the evidence in question notwithstanding the rehabilitation principle and exclusions⁹ and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions¹⁰.

1 As to the meaning of 'proceedings before a judicial authority' see PARA 663 note 2.

2 As to the meaning of 'Great Britain' see PARA 9 note 2.

3 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663.

4 Ie by virtue of any of the Rehabilitation of Offenders Act 1974 s 7(2)(a)-(e), Sch 2 para 6(1), (2) (see PARA 683) or of any order for the time being in force under s 7(4) (see PARA 685).

5 As to spent convictions see PARA 661. As to the meaning of 'conviction' see PARA 660 note 3.

6 Ie the Rehabilitation of Offenders Act 1974 s 8 (see PARA 686).

7 As to spent cautions see PARA 662. As to the meaning of 'caution' see PARA 660 note 6.

8 As to the circumstances ancillary to a conviction or a caution see PARA 663 note 10.

9 Ie notwithstanding the provisions of the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1): see note 3; and PARAS 660, 663.

10 Rehabilitation of Offenders Act 1974 s 7(3), Sch 2 para 6(1), (3) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6).

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685. Administrative proceedings.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to:

- 2240 (1) proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any of the excepted professions³;
- 2241 (2) proceedings before the Court of Appeal of the High Court in the exercise of their disciplinary jurisdiction in respect of solicitors⁴;
- 2242 (3) disciplinary proceedings against a constable⁵;
- 2243 (4) proceedings before the Gambling Commission⁶;
- 2244 (5) mental health proceedings⁷ before any tribunal⁸;
- 2245 (6) specified proceedings⁹ relating to the dealing and use of firearms¹⁰;
- 2246 (7) proceedings in respect of the grant, renewal or variation of a licence¹¹ relating to persons under the age of 18 going abroad for the purpose of performing or being exhibited for profit¹²;
- 2247 (8) proceedings in respect of a direction prohibiting a person from teaching¹³ or of any prohibition or restriction on a person's employment or work which has effect as if it were contained in such a direction¹⁴;
- 2248 (9) proceedings in respect of an application for, or cancellation of, the Secretary of State's approval¹⁵ of a place for the medical termination of pregnancies¹⁶;
- 2249 (10) proceedings in respect of an application for, or cancellation of, registration in respect of a nursing home or a residential home¹⁷;
- 2250 (11) proceedings on an application to the chief officer of police for a certificate¹⁸ as to the fitness of the applicant to acquire or acquire and keep explosives¹⁹;
- 2251 (13) proceedings relating to a taxi driver licence²⁰;
- 2252 (14) as from a day to be appointed, proceedings before the National Lottery Commission²¹ in respect of the grant or revocation of a licence²² to run the National Lottery or by way of appeal to the Secretary of State against the revocation of any such licence by the National Lottery Commission²³;
- 2253 (15) proceedings relating to the registration²⁴ of social workers²⁵;
- 2254 (16) appeals²⁶ in matters relating to the licensing of workers in the private security industry²⁷ and specified proceedings relating to the approval of persons to undertake licensable conduct at specified football matches without a licence²⁸ pursuant to the statutory exemptions²⁹ from the licensing requirement³⁰;
- 2255 (17) proceedings before the Parole Board³¹;
- 2256 (18) recovery proceedings for criminal injuries compensation³²;
- 2257 (19) specified proceedings³³ for the recovery of the proceeds of criminal conduct³⁴;
- 2258 (20) proceedings by way of appeal against, or review of, any decision taken³⁵, on consideration of a spent conviction or caution³⁶; and
- 2259 (21) proceedings held for the receipt of evidence affecting the determination of any question arising in any of these proceedings³⁷.

- 1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663.
- 2 le by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5) (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6) (under which the Secretary of State may by order exclude the application of the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1) in relation to any proceedings specified in the order (other than, in connection with spent convictions, proceedings to which the Rehabilitation of Offenders Act 1974 s 8 (see PARA 686) applies) to such extent and for such purposes as may be so specified). As to spent convictions and spent cautions see PARAS 661, 662.
- 3 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(a), Sch 3 para 1 (art 5(1) amended by SI 2008/3259). As to the excepted professions, and a further restriction on the rehabilitation provisions in connection therewith, see PARA 687.
- 4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 2. As to the disciplining of solicitors see **LEGAL PROFESSIONS** vol 66 (2009) 886 PARA 886 et seq.
- 5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 3.
- 6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 4. This provision refers to the Gaming Board for Great Britain, which has been abolished and replaced by the Gambling Commission: see the Gambling Act 2005 Pt 2 (ss 20-32); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 4.
- 7 le proceedings under the Mental Health Act 1983: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 560 et seq.
- 8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 5 (substituted by SI 2008/2683).
- 9 le proceedings under the Firearms Act 1968 in respect of:
 - 1007 (1) the registration of a person as a firearms dealer, the removal of a person's name from a register of firearms dealers or the imposition, variation or revocation of conditions of any such registration (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 6(a): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 688-691);
 - 1008 (2) the grant, renewal, variation or revocation of a firearm certificate (Sch 3 para 6(b): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 682-685);
 - 1009 (3) the grant, renewal or revocation of a shot gun certificate (Sch 3 para 6(c): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 682-685); or
 - 1010 (4) the grant of a permit under the Firearms Act 1968 s 7(1), 9(2) or 13(1)(c) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 6(d): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 646, 648, 657).
- 10 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 6. In connection with firearms dealers see also PARA 689; and in connection with certificates see also PARA 703.
- 11 le under the Children and Young Persons Act 1933 s 25: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 776-778.
- 12 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 7. In connection with child performers see also PARA 692.
- 13 le a direction given under the Education Act 2002 s 142: see **EDUCATION** vol 15(2) (2006 Reissue) PARA 782.
- 14 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 9 (substituted by SI 2006/2143).
- 15 le under the Abortion Act 1967 s 1: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 112.
- 16 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 11(a).
- 17 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 paras 11(b), 12. As to the registration of nursing homes and residential homes see now the Care Standards Act 2000 Pt II (ss 11-42); and **SOCIAL SERVICES AND COMMUNITY CARE**. In connection with the registration of nursing homes and residential homes see also PARA 689.

18 le pursuant to the Control of Explosives Regulations 1991, SI 1991/1531, regs 4, 7: see **EXPLOSIVES** vol 17(2) (Reissue) PARA 967.

19 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 13 (amended by SI 2005/1082). In connection with explosives certificates see also PARAS 689, 703.

20 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 16 (substituted by SI 2003/965). As to the meaning of 'taxi driver licence', and for further restrictions on the rehabilitation provisions in this regard, see PARA 701.

21 As to the National Lottery Commission see **LICENSING AND GAMBLING** vol 67 (2008) PARA 7 et seq.

22 le a licence under the National Lottery etc Act 1993 Pt 1 (ss 1-20): see **LICENSING AND GAMBLING** vol 68 (2008) PARA 691 et seq.

23 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 17 (prospectively added by SI 2002/441). At the date at which this volume states the law no day had been appointed for the coming into force of this provision. For further restrictions on the rehabilitation provisions in this regard see PARA 699.

24 le under the Care Standards Act 2000 Pt IV (ss 54-71): see **SOCIAL SERVICES AND COMMUNITY CARE**.

25 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 18 (added by SI 2003/965). For further restrictions on the rehabilitation provisions in this regard see PARA 700.

26 le proceedings under the Private Security Industry Act 2001 s 11: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 900.

27 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 19 (added by SI 2003/965). For further restrictions on the rehabilitation provisions in this regard see PARA 702.

28 le a licence granted under the Private Security Industry Act 2001 s 8: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 899.

29 le the Private Security Industry Act 2001 s 4: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 899 et seq.

30 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 23 (added by SI 2006/2143). The proceedings relating to the undertaking of licensable conduct at football matches without a licence are proceedings brought before the Football Association or Football Association Premier League against a decision taken by the body before which the proceedings are brought to refuse to approve a person as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as a supervisor or manager of such a person, such conduct: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 23 (as so added). For further restrictions on the rehabilitation provisions in this regard see PARA 702.

31 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 20 (added by SI 2006/2143). As to the Parole Board see **PRISONS** vol 36(2) (Reissue) PARAS 618-619.

32 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 21 (added by SI 2006/2143). As to these proceedings see the Criminal Injuries Compensation Act 1995 s 7D; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2053.

33 le proceedings under:

1011 (1) the Proceeds of Crime Act 2002 Pt 5 Ch 2 (ss 243-288) (civil recovery: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2150 et seq) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 22(a) (added by SI 2006/2143));

1012 (2) proceedings pursuant to a notice under the Proceeds of Crime Act 2002 s 317(2) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 22(b) (as so added)); and

1013 (3) proceedings pursuant to an application under the Proceeds of Crime Act 2002 Pt 8 (ss 341-416) in connection with a civil recovery investigation (within the meaning of s 341: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 804 et seq) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 22(a) (as so added)).

34 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 22 (as added: see note 33).

35 le by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023.

36 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 14.

37 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 3 para 15.

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686. Defamation actions.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions¹, do not affect any action for libel or slander begun by a rehabilitated person² and founded upon the publication of any matter imputing that the claimant has committed or been charged with or prosecuted for or convicted³ of or sentenced⁴ for an offence which was the subject of a spent conviction⁵ if the publication complained of took place before the conviction in question became spent⁶. Similarly, those provisions do not in general⁷ prevent the defendant in any such action from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him, or restrict the matters he may establish in support of any such defence⁸, and they do not⁹ restrict the matters that a defendant who is relying on a defence of qualified privilege in any such action where malice is alleged against him may establish in rebuttal of the allegation¹⁰.

These exceptions for defamation actions do not apply in relation to spent cautions¹¹.

1 See the Rehabilitation of Offenders Act 1974 s 4(1); and PARAS 660, 663.

2 As to the meaning of 'rehabilitated person' see PARA 660.

3 As to the meaning of 'convicted' see PARA 660 note 3.

4 As to the meaning of 'sentenced' see PARA 660 note 4.

5 As to spent convictions see PARA 661.

6 Rehabilitation of Offenders Act 1974 s 8(1), (2). The provisions of s 8(3)-(7) (see the text and notes 7-11) are disappplied in any such case: s 8(2).

7 See note 8.

8 Rehabilitation of Offenders Act 1974 s 8(3). However:

1014 (1) a defendant in any action to which s 8 applies may not by virtue of s 8(3) be entitled to rely upon the defence of justification if the publication is proved to have been made with malice (s 8(5), to which s 8(3) is expressly made subject); and

1015 (2) a defendant in any such action may not, by virtue of s 8(3), be entitled to rely on any matter or adduce or require any evidence for the purpose of establishing (whether under the Defamation Act 1996 s 14 (see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 100-101) or otherwise) the defence that the matter published constituted a fair and accurate report of judicial proceedings if it is proved that the publication contained a reference to evidence which was ruled to be inadmissible in the proceedings by virtue of the Rehabilitation of Offenders Act 1974 s 4(1) (s 8(6) (amended by the Defamation Act 1996 s 14(4)), to which the Rehabilitation of Offenders Act 1974 s 8(3) is expressly made subject.

Note that s 8(3) will apply without the qualifications imposed by s 8(6) in relation to any report of judicial proceedings contained in any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law (s 8(7)(a)) and any report or account of judicial proceedings published for bona fide educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes (s 8(7)(b)).

9 Ie without prejudice to the generality of the Rehabilitation of Offenders Act 1974 s 8(3): s 8(4).

10 Rehabilitation of Offenders Act 1974 s 8(4). A rehabilitated person may recover damages for libel provided he can show that publication of convictions which are to be treated as spent by virtue of s 1(1) (see PARA 661) was malicious; but an injunction restraining future publication will be granted only where the evidence of malice is overwhelming: see *Herbage v Pressdram Ltd* [1984] 2 All ER 769, [1984] 1 WLR 1160, CA. See further **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 171-172.

11 See the Rehabilitation of Offenders Act 1974 Sch 2 paras 5, 6; and PARAS 682, 683. As to spent cautions see PARA 662.

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687. Excepted professions.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates for admission to any of a number of specified professions, and none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context³ apply to the dismissal or exclusion of any person from any such profession⁴. The professions are:

- 2260 (1) medical practitioner⁵;
- 2261 (2) barrister or solicitor⁶;
- 2262 (3) chartered certified accountant⁷;
- 2263 (4) dentist or registered dental care professional⁸;
- 2264 (5) veterinary surgeon⁹;
- 2265 (6) nurse or midwife¹⁰;
- 2266 (7) optometrist or dispensing optician¹¹;
- 2267 (8) registered pharmacist or registered pharmacy technician¹²;
- 2268 (9) any profession to which the Health Professions Order 2001¹³ applies and which is undertaken following registration under that Order¹⁴;
- 2269 (10) registered osteopath¹⁵;
- 2270 (11) registered chiropractor¹⁶;
- 2271 (12) actuary¹⁷;
- 2272 (13) registered foreign lawyer¹⁸;
- 2273 (14) legal executive¹⁹;
- 2274 (15) receiver appointed by the Court of Protection²⁰;
- 2275 (16) home inspector²¹.

The operation of the rehabilitation provisions is also restricted in relation to proceedings in respect of a person's admission to, or disciplinary proceedings against a member of, any of these professions²².

¹ As to the meaning of 'rehabilitated person' see PARA 660.

² I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

³ I.e. the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

- 4 Rehabilitation of Offenders Act 1974 s 4(4), Sch 2 para 4 (Sch 2 added by the Criminal Justice and Immigration Act 2008 Sch 10 paras 1, 6) (providing that the Secretary of State may by order make such provisions as seem to him appropriate for excluding or modifying the application of either or both of the Rehabilitation of Offenders Act 1974 s 4(2)(a) or (b) or Sch 2 para 3(2)(a) or (b) in relation to questions put in such circumstances as may be specified in the order and may provide for such exceptions from the provisions of s 4(3) or Sch 2 para 3(4), (5) as seem to him appropriate, in such cases or classes of case, and in relation to convictions of such a description, as may be specified in the order); Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(a)(i), 4(a) (arts 3, 4 amended by SI 2008/3259).
- 5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 1.
- 6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 2.
- 7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 3. For these purposes 'chartered accountant' means a member of the Institute of Chartered Accountants in England and Wales and 'certified accountant' means a member of the Association of Certified Accountants: Sch 1 Pt IV.
- 8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 4 (substituted by SI 2009/1182). As to the meaning of 'registered dental care professional' see the Dentists Act 1984 s 53; and **MEDICAL PROFESSIONS** (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (amended by SI 2009/1182)).
- 9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 5.
- 10 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 6.
- 11 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 7 (amended by SI 2005/848).
- 12 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I paras 8, 8A (Sch 1 Pt I para 8 substituted, Sch 1 Pt I para 8A added, by SI 2007/289). 'Registered pharmacist' means a person who is registered in the register maintained under the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 10(1), and 'registered pharmacy technician' means a person who is registered in the register maintained under art 21(1): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (amended by SI 2007/289). The amendment made by the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, comes into force on a date to be notified in the London Gazette.
- 13 Ie the Health Professions Order 2001, SI 2001/254: see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 308 et seq.
- 14 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 10 (amended by SI 2003/1590).
- 15 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 11 (added by the Osteopaths Act 1993 s 39(1), (2)). As to the meaning of 'registered osteopath' see the Osteopaths Act 1993 s 41; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 503 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by the Osteopaths Act 1993 s 39(1), (4))).
- 16 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 12 (added by the Chiropractors Act 1994 s 40(1), (2)). As to the meaning of 'registered chiropractor' see the Chiropractors Act 1994 s 43; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 595 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by the Chiropractors Act 1994 s 40(4))).
- 17 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 14 (Sch 1 Pt I paras 13-17 added by SI 2002/441; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 13 revoked by SI 2009/1182). For these purposes 'actuary' means a member of the Institute of Actuaries or a member or student of the Faculty of Actuaries: see the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2002/441).
- 18 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 15 (as added: see note 17). As to the meaning of 'registered foreign lawyer' see the Courts and Legal Services Act 1989 s 89; and **LEGAL PROFESSIONS** vol 65 (2008) PARA 628 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2002/441)).

19 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 16 (as added: see note 17). For these purposes 'legal executive' means a fellow of the Institute of Legal Executives: see Sch 1 Pt IV (definition added by SI 2002/441).

20 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 17 (as added: see note 17).

21 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt I para 18 (added by SI 2006/2143). 'Home inspector' means a person who is a member of a certification scheme approved by the Secretary of State in accordance with the Housing Act 2004 s 164(3): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2006/2143).

22 See PARA 685.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(1) REHABILITATION OF OFFENDERS/(iii) Limitations and Restrictions on Statutory Rehabilitation Provisions/688. Excepted offices and employments.

688. Excepted offices and employments.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates for a number of specified offices and employments, and none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context³ apply in relation to specified offices and employments⁴. The offices and employments are:

- 2276 (1) judicial appointments⁵;
- 2277 (2) the Director of Public Prosecutions and any office or employment in the Crown Prosecution Service⁶;
- 2278 (3) designated officers for magistrates' courts, for justices of the peace or for local justice areas, justices' clerks and assistants to justices' clerks⁷;
- 2279 (4) constables, persons appointed as police cadets to undergo training with a view to becoming constables and persons employed for the purpose of, or to assist the constable of, a police force established under any enactment; naval, military and air force police⁸;
- 2280 (5) any employment which is concerned with the administration of, or is otherwise normally carried out wholly or partly within the precincts of, a prison, remand centre, removal centre, short-term holding facility, young offender institution or young offenders institution, and members of boards of visitors appointed under the Prison Act 1952⁹;
- 2281 (6) traffic wardens appointed under the Road Traffic Regulation Act 1984¹⁰;
- 2282 (7) specified probation officers¹¹;
- 2283 (8) any office or employment which is concerned with the provision of care services¹² to vulnerable adults¹³ or the representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or the Welsh Ministers or created under any enactment, and which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services¹⁴;
- 2284 (9) any work which is regulated activity¹⁵ relating to vulnerable adults¹⁶;
- 2285 (10) any employment or other work which is concerned with the provision of health services¹⁷ and which is of such a kind as to enable the holder of that employment or the person engaged in that work to have access to persons in receipt of such services in the course of his normal duties¹⁸;
- 2286 (11) any work which is work in a regulated position¹⁹ or work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18²⁰;
- 2287 (12) any work which is regulated activity²¹ relating to children²²;
- 2288 (13) any employment in the Royal Society for the Prevention of Cruelty to Animals where the person employed or working, as part of his duties, may carry out the humane killing of animals²³;
- 2289 (14) any office or employment in the Serious Fraud Office²⁴;
- 2290 (15) any office or employment in the Serious Organised Crime Agency²⁵;

- 2291 (16) the Commissioners of Her Majesty's Revenue and Customs and any office or employment in their service²⁶;
- 2292 (17) the Director and any office or employment in the Revenue and Customs Prosecutions Office²⁷;
- 2293 (18) any employment which is concerned with the monitoring, for the purposes of child protection, of communications by means of the internet²⁸;
- 2294 (19) any employment or other work which is normally carried out in premises approved under the Criminal Justice and Court Services Act 2000²⁹;
- 2295 (20) any employment or other work which is normally carried out in a hospital used only for the provision of high security psychiatric services³⁰;
- 2296 (21) an individual designated under certain provisions of the Traffic Management Act 2004³¹;
- 2297 (22) judges' clerks, secretaries and legal secretaries³²;
- 2298 (23) court officers and court contractors, who in the course of their work, have to face contact with judges of the Supreme Court, or access to such judges' lodgings³³;
- 2299 (24) persons who in the course of their work have regular access to personal information relating to an identified or identifiable member of the judiciary³⁴;
- 2300 (25) court officers and court contractors who, in the course of their work, attend either the Royal Courts of Justice or the Central Criminal Court³⁵;
- 2301 (26) court security officers and tribunal security officers³⁶;
- 2302 (27) court contractors who, in the course of their work, have unsupervised access to court-houses, offices and other accommodation used in relation to the courts³⁷;
- 2303 (28) contractors, sub-contractors, and any person acting under the authority of such a contractor or sub-contractor, who in the course of their work, have unsupervised access to tribunal buildings, offices and other accommodation used in relation to tribunals³⁸;
- 2304 (29) court officers who execute county court warrants³⁹;
- 2305 (30) High Court enforcement officers⁴⁰;
- 2306 (31) sheriffs and under-sheriffs⁴¹;
- 2307 (32) tipstaffs⁴²;
- 2308 (33) any other persons who execute High Court writs or warrants who act under the authority of a person listed in heads (27) to (30) above⁴³;
- 2309 (34) persons who execute writs of sequestration⁴⁴;
- 2310 (35) civilian enforcement officers⁴⁵;
- 2311 (36) persons who are authorised⁴⁶ to execute warrants and any other person other than a constable who is authorised⁴⁷ to execute a warrant⁴⁸;
- 2312 (37) persons who execute clamping orders⁴⁹;
- 2313 (38) the Official Solicitor and his deputy⁵⁰;
- 2314 (39) persons appointed to the office of Public Trustee or deputy Public Trustee, and officers of the Public Trustee⁵¹;
- 2315 (40) court officers and court contractors who exercise functions in connection with the administration and management of funds in court including the deposit, payment, delivery and transfer in, into and out of any court of funds in court and regulating the evidence of such deposit, payment, delivery or transfer and court officers and court contractors, who receive payments in pursuance of a conviction or order of a magistrates' court⁵²;
- 2316 (41) persons working in the Department for Children, Schools and Families, the Office for Standards in Education, Children's Services and Skills or in the Government Offices for the English Regions with access to sensitive or personal information about children or vulnerable adults⁵³;
- 2317 (42) any office, employment or other work which is concerned with the establishment or operation⁵⁴ of an information database relating to children's services in England and which is of such a kind as to enable the holder of that office

- or employment, or the person engaged in that work, to have access to information included in the database⁵⁵;
- 2318 (43) any office, employment or other work which is of such a kind that the person is or may be permitted or required to be given access⁵⁶ to such a database⁵⁷;
- 2319 (44) any work which is normally concerned with the provision of any form of information, advice or guidance wholly or mainly to children which relates to their physical, emotional or educational well-being and is provided by means of telephone or other form of electronic communication including the internet and mobile telephone text messaging⁵⁸;
- 2320 (45) the chairman, other members, and members of staff (including any person seconded to serve as a member of staff) of the Independent Safeguarding Authority⁵⁹;
- 2321 (46) staff working within the Office of the Public Guardian with access to data relating to children and vulnerable adults⁶⁰;
- 2322 (47) the Commissioner for Older People in Wales, and his deputy, and any person appointed by the Commissioner to assist him in the discharge of his functions or authorised to discharge his functions on his behalf⁶¹;
- 2323 (48) the Commissioners for the Gambling Commission and any office or employment in their service⁶²;
- 2324 (49) individuals seeking authorisation from the Secretary of State for the Home Department to become authorised search officers⁶³;
- 2325 (50) any employment or other work where the normal duties involve caring for, training, supervising, or being solely in charge of, persons aged under 18 serving in the naval, military or air forces of the Crown or include supervising or managing a person employed or working in such a capacity⁶⁴; and
- 2326 (51) any office or employment or other work in the Criminal Records Bureau⁶⁵.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 I.e. the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(a)(ii), 4(b) (arts 3, 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(a)(ii), 4(b) substituted by SI 2001/1192). The 'specified offices and employments' for these purposes include any other work specified in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II paras 12A, 13, 14, 14A, 20, 21, 35, 36, 37, 40, 43 or 44 (see the text and notes 15-65): arts 3(a)(ii), 4(b) (as so substituted; amended by SI 2009/1818). See also PARA 687 note 4.

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 1. For these purposes 'judicial appointment' means an appointment to any office by virtue of which the holder has power, whether alone or with others, under any enactment or rule of law to determine any question affecting the rights, privileges, obligations or liabilities of any person: Sch 1 Pt IV.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 2 (substituted by SI 2002/441).

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 4 (substituted by SI 2001/1192; and amended by SI 2005/617; SI 2006/2143). 'Assistants to justices' clerks' has the same meaning as in the Courts Act 2003 s 27(5) (see **MAGISTRATES**): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2006/2143).

8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 6.

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 7 (amended by SI 2006/2143). As to boards of visitors appointed under the Prison Act 1952 see s 6; and **PRISONS** vol 36(2) (Reissue) PARA 515. 'Removal centre' and 'short-term holding facility' have the meanings given by the Immigration and Asylum Act 1999 s 147 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2006/2143).

10 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 8. See the Road Traffic Regulation Act 1984 s 95; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 868.

11 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 9. Under Sch 1 Pt II para 9, such officers are stated to be officers appointed under the Powers of Criminal Courts Act 1973 Sch 3 (repealed).

12 'Care services' means:

1016 (1) accommodation and nursing and personal care in a care home (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2002/441));

1017 (2) personal care or nursing or support for a person to live independently in his own home (Sch 1 Pt IV (as so amended));

1018 (3) social care services (Sch 1 Pt IV (as so amended)); and

1019 (4) any services provided in an establishment catering for a person with learning difficulties (Sch 1 Pt IV (as so amended)).

As to the meaning of 'care home' see the Care Standards Act 2000 s 3; and **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 985.

13 'Vulnerable adult' means a person aged 18 or over who has a condition of the following type:

1020 (1) a substantial learning or physical disability (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2002/441));

1021 (2) a physical or mental illness or mental disorder, chronic or otherwise, including an addiction to alcohol or drugs (Sch 1 Pt IV (as so amended)); or

1022 (3) a significant reduction in physical or mental capacity (Sch 1 Pt IV (as so amended)).

14 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 12 (substituted by SI 2006/2143).

15 le within the meaning of the Safeguarding Vulnerable Groups Act 2006 Sch 4 Pt 2 (see **SOCIAL SERVICES AND COMMUNITY CARE**).

16 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 12A (Sch 1 Pt II paras 12A, 14A, 44 added by SI 2009/1818).

17 For these purposes 'health services' means services provided under the National Service Acts 1946-1973 (now consolidated in the National Health Service Act 2006) and similar services provided otherwise than under the National Health Service: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV.

18 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 13 (substituted by SI 2001/1192).

19 'Regulated position' means a position which is a regulated position for the purposes of the Criminal Justice and Court Services Act 2000 Pt II (ss 26-42) (protection of children: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663 et seq): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2001/1192).

20 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 14 (substituted by SI 2001/1192).

21 le within the meaning of the Safeguarding Vulnerable Groups Act 2006 Sch 4 Pt 1 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 687).

22 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 14A (as added: see note 16).

23 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 15 (Sch 1 Pt II paras 15-19 added by SI 2002/441; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 15 amended by SI 2006/2143).

24 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 16 (as added: see note 23).

25 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 17 (as added (see note 23); and amended by SI 2006/594).

26 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 18 (as added (see note 23); and substituted by SI 2006/2143).

27 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 18A (added by SI 2006/2143).

28 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 19 (as added: see note 23).

29 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 20 (Sch 1 Pt II paras 20, 21 added by SI 2003/965). The Criminal Justice and Court Services Act 2000 s 9 has been repealed.

30 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 21 (as added: see note 29).

31 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 22 (Sch 1 Pt II paras 22-33 added by SI 2006/2143). See the Traffic Management Act 2004 s 2; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 864.

32 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 23 (as added: see note 31). See the Senior Courts Act 1981 s 98; and **COURTS** vol 10 (Reissue) PARA 671. As to the Senior Courts Act 1981 see PARA 36 note 18.

33 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 24 (as added: see note 31). 'Court officer' means a person appointed by the Lord Chancellor under the Courts Act 2003 s 2(1) (see **COURTS**); 'court contractor' means a person who has entered into a contract with the Lord Chancellor under the Courts Act 2003 s 2(4) (see **COURTS**), such a person's sub-contractor, and persons acting under the authority of such a contractor or sub-contractor for the purpose of discharging the Lord Chancellor's general duty in relation to the courts; and 'judges of the Supreme Court' means the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, the Lord Justices of Appeal and the puisne judges of the High Court: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definitions added by SI 2006/2143).

34 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 25 (as added: see note 31). 'Personal information' means any information which is of a personal or confidential nature and is not in the public domain and it includes information in any form but excludes anything disclosed for the purposes of proceedings in a particular cause or matter: Sch 1 Pt IV (definition added by SI 2006/2143).

35 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 26 (as added: see note 31).

36 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 27 (as added: see note 31). 'Court security officers' has the meaning given by the Courts Act 2003 s 51 (see **MAGISTRATES**); and 'tribunal security officers' means persons who, in the course of their work, guard tribunal buildings, offices and other accommodation used in relation to tribunals against unauthorised access or occupation, against outbreaks of disorder or against damage: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definitions added by SI 2006/2143).

37 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 28 (as added: see note 31).

38 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 29 (as added: see note 31). 'Tribunals' means any person exercising the judicial power of the State, that is not a court

listed in the Courts Act 2003 s 1(1) (see **COURTS**): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2006/2143).

39 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(a) (as added: see note 31).

40 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(b) (as added: see note 31).

41 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(c) (as added: see note 31).

42 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(d) (as added: see note 31).

43 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(e) (as added: see note 31).

44 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(f) (as added: see note 31).

45 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(g) (as added: see note 31). As to the meaning of 'civilian enforcement officers' see the Magistrates' Courts Act 1980 s 125A; and **MAGISTRATES** vol 29(2) (Reissue) PARA 861.

46 Ie under the Magistrates' Courts Act 1980 s 125B(1): see **MAGISTRATES** vol 29(2) (Reissue) PARA 861.

47 Ie under the Magistrates' Courts Act 1980 s 125(2): see **MAGISTRATES** vol 29(2) (Reissue) PARA 861.

48 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(h) (as added: see note 31).

49 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 30(i) (as added: see note 31). As to the meaning of 'clamping orders' see the Courts Act 2003 Sch 5 para 38(2); and **MAGISTRATES** (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2006/2143)).

50 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 31 (as added: see note 31).

51 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 32 (as added: see note 31).

52 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 33 (as added: see note 31). 'Funds in court' has the meaning given by the Administration of Justice Act 1982 s 47 (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1548); Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2006/2143).

53 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 34 (Sch 1 Pt II paras 34-43 added by SI 2007/2149; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 34 amended by SI 2007/3324).

54 Ie under the Children Act 2004 s 12 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 188).

55 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 35 (as added: see note 53).

56 See note 54.

57 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 36 (as added: see note 53).

58 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 37 (as added: see note 53).

59 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 38 (as added: see note 53). As to the Independent Safeguarding Authority (formerly the Independent Barring Board)

see the Safeguarding Vulnerable Groups Act 2006 s 1; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 675.

60 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 39 (as added: see note 53).

61 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 40 (as added: see note 53).

62 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 41 (as added: see note 53).

63 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 42 (as added: see note 53).

64 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 43 (as added: see note 53).

65 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt II para 44 (as added: see note 16).

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689. Excepted occupations.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates or of any other person to pursue any specified occupation or to pursue it subject to a particular condition or restriction, and none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context³ apply in relation to any occupation so specified⁴. The specified occupations are:

- 2327 (1) firearms dealer⁵;
- 2328 (2) any occupation in respect of which an application to the Gambling Commission for a licence, certificate or registration is required by or under any enactment⁶;
- 2329 (3) any occupation which is concerned with the management of a place in respect of which the approval of the Secretary of State is required under the Abortion Act 1967⁷;
- 2330 (4) any occupation which is concerned with carrying on a nursing home in respect of which registration is required⁸;
- 2331 (5) any occupation which is concerned with carrying on an establishment in respect of which registration as a residential home is required⁹;
- 2332 (6) any occupation in respect of which the holder, as occupier of premises on which explosives are kept, is required¹⁰ to obtain from the police or a court of summary jurisdiction a certificate as to his fitness to keep the explosives¹¹;
- 2333 (7) approved legal services body manager¹²; and
- 2334 (8) a regulated immigration adviser¹³.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 I.e. the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(a)(iii), 4(b) (arts 3, 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(b) substituted by SI 2001/1192; and amended by SI 2007/2149). See also PARA 687 note 4.

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 1. For these purposes, 'firearms dealer' has the meaning assigned to that expression by the Firearms Act 1968 s 57(4) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 636): Rehabilitation of Offenders Act

1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV. The operation of the rehabilitation provisions is also restricted in relation to specified proceedings relating to the dealing and use of firearms: see **PARA 685**.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 2. Schedule 1 Pt III para 2 refers to the Gaming Board for Great Britain, the functions, rights and liabilities of which were transferred to the Gambling Commission under the Gambling Act 2005 and any references to the Board in any instrument are to be treated as a reference to the Commission: see s 21, Sch 5 para 4; and **LICENSING AND GAMBLING** vol 67 (2008) **PARAS 5, 330 et seq.**

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 6(a). See the Abortion Act 1967 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) **PARA 112**.

8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 6(b). As to the registration of nursing homes see now the Care Standards Act 2000 Pt II (ss 11-42); and **SOCIAL SERVICES AND COMMUNITY CARE**. The operation of the rehabilitation provisions is also restricted in relation to proceedings in respect of an application for, or cancellation of, registration in respect of a nursing home: see **PARA 685**.

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 7. As to the registration of residential homes see now the Care Standards Act 2000 Pt II; and **SOCIAL SERVICES AND COMMUNITY CARE**. The operation of the rehabilitation provisions is also restricted in relation to proceedings in respect of an application for, or cancellation of, registration in respect of a residential home: see **PARA 685**.

10 Pursuant to the Control of Explosives Regulations 1991, SI 1991/1531, regs 4, 7 (see **EXPLOSIVES** vol 17(2) (Reissue) **PARA 967**), to obtain from the chief officer of police a valid explosives certificate certifying him to be a fit person to acquire or acquire and keep explosives.

11 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 8 (amended by SI 2005/1082). The operation of the rehabilitation provisions is also restricted in relation to proceedings in relation to a person's fitness to acquire or acquire and keep explosives: see **PARA 685**.

12 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 10 (added by SI 2008/3259).

13 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt III para 11 (added by SI 2009/1818). By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 1 Pt IV (definition added by SI 2009/1818), 'regulated immigration adviser' means any person who provides immigration advice or immigration services as defined in the Immigration and Asylum Act 1999 s 82(1) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) **PARA 169**) and is:

1023 (1) a registered person under Pt 5 (ss 82-93) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) **PARA 170**); or

1024 (2) a person who acts on behalf of and under the supervision of such a registered person; or

1025 (3) a person who falls within s 84(4)(a), (b) or (c) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) **PARA 170**).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(1) REHABILITATION OF OFFENDERS/(iii) Limitations and Restrictions on Statutory Rehabilitation Provisions/690. Work with children.

690. Work with children.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person, in the course of duties of his work, in order to assess the suitability of a person to work with children³ where:

- 2335 (1) the question relates to the person whose suitability is being assessed⁴;
- 2336 (2) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person living in the same household as him⁵;
- 2337 (3) the person whose suitability is being assessed lives on the premises where his work with children would normally take place and the question relates to a person who regularly works on those premises at a time when the work with children usually takes place⁶; or
- 2338 (4) the work for which the person's suitability is being assessed is child minding⁷ which would normally take place on premises other than premises where that person lives and the question relates to a person who lives on those other premises or to a person who regularly works on them at a time when the child minding takes place⁸,

¹ As to the meaning of 'rehabilitated person' see PARA 660.

² I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person to whom the question relates must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(aa) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(aa) added by SI 1986/1249; and substituted by SI 2001/1192).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

³ 'Work' includes work of any kind, whether paid or unpaid, and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract, and an office established by or by virtue of an enactment; 'work with children' means any work which is work in a position which is a regulated position for the purposes of the Criminal Justice and Court Services Act 2000 Pt II (ss 26-42) (protection of children: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663 et seq) or work in a further education institution where the normal duties of that work involve regular contact with persons aged under 18: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1), Sch 1 Pt II para 14, Pt IV (art 2(1) amended, Sch 1 Pt II para 14 substituted, Sch 1 Pt IV amended, by SI 2001/1192; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) further amended by SI 2008/3259).

⁴ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(aa)(i) (as added and substituted: see note 2). See also PARA 687 note 4.

⁵ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(aa)(ii) (as added and substituted: see note 2).

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(aa)(iii) (as added and substituted: see note 2).

7 'Child minding' means child minding within the meaning of the Children Act 1989 s 79A (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1072) and early years childminding within the meaning of the Childcare Act 2006 s 96(4) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1117) or later years childminding within the meaning of s 96(8) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1117); Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (amended by SI 2001/1192; SI 2008/3259).

8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(aa)(iv) (as added and substituted: see note 2).

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691. Day care.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person in the course of the duties of his work³ in order to assess the suitability of a person to provide day care⁴ where the question relates either to the person whose suitability is being assessed or to a person who lives on the premises which are or are proposed to be day care premises⁵.

¹ As to the meaning of 'rehabilitated person' see PARA 660.

² I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person to whom the question relates must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(f) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(f) added by SI 2001/1192).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

³ As to the meaning of 'work' see PARA 690 note 3.

⁴ 'Day care' means day care for which registration is required by the Children Act 1989 s 79D(5) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1166) and early years provision within the meaning of the Childcare Act 2006 96(2) (other than early years childminding) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1117), or later years provision within the meaning of s 96(6) (other than later years childminding) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1117), for which registration is required, or permitted, under Pt 3 (ss 32-98); and 'day care premises' means any premises on which day care is provided, but does not include any part of the premises where children are not looked after: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (amended by 2001/1192; SI 2008/3259).

⁵ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(f) (as added and amended: see note 2).

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692. Child performers.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates or of any other person to hold, or to hold subject to a particular condition or restriction, licences issued³ in connection with persons under the age of 18 going abroad for the purpose of performing or being exhibited for profit⁴.

¹ As to the meaning of 'rehabilitated person' see PARA 660.

² I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

³ I.e. under the Children and Young Persons Act 1933 s 25: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARAS 776-778.

⁴ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(a)(iv), Sch 2 para 2 (art 3 amended by SI 2008/3259). The operation of the rehabilitation provisions is also restricted in relation to specified proceedings relating to such licences: see PARA 685.

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693. Employment in financial services.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by, or on behalf of, a specified questioner to the extent that it relates to a conviction (or any circumstances ancillary to a conviction) of any individual where the question is asked in order to assess the suitability of the individual to whom the question relates to have a specified status³. The specified questioners, in relation to the statuses specified in the list below, are:

- 2339 (1) in relation to a person with Pt IV permission⁴, the Financial Services Authority⁵;
- 2340 (2) in relation to an approved person⁶ or an associate of such a person (whether or not an individual), the Financial Services Authority or the authorised person⁷ or the applicant for Pt IV permission who made the application for the Authority's approval⁸ in relation to the person mentioned⁹;
- 2341 (3) in relation to the manager or trustee of an authorised unit trust scheme¹⁰ or an associate of such a person (whether or not an individual), the Financial Services Authority or the unit trust scheme¹¹;
- 2342 (4) in relation to a director of an open-ended investment company¹² or an associate of such a person (whether or not an individual), the Financial Services Authority or the open-ended investment company¹³;
- 2343 (5) in relation to an associate of the operator or trustee of a relevant collective investment scheme¹⁴, the Financial Services Authority or the collective investment scheme¹⁵;
- 2344 (6) in relation to an associate of a United Kingdom recognised investment exchange¹⁶ or United Kingdom recognised clearing house¹⁷, the Financial Services Authority or the investment exchange or clearing house¹⁸;
- 2345 (7) in relation to a controller of a person with Pt IV permission, the Financial Services Authority or the person with Pt IV permission¹⁹;
- 2346 (8) in relation to a person (the 'specified person') who carries on a regulated activity²⁰ but to whom the general prohibition does not apply²¹, the Financial Services Authority; and in relation to an associate of a specified person (whether or not an individual), the specified person²²;
- 2347 (9) in relation to a key worker²³ of the Financial Services Authority, the Financial Services Authority²⁴;
- 2348 (10) in relation to an ombudsman²⁵ of the Financial Ombudsman Service, the scheme operator²⁶ of the Financial Ombudsman Service²⁷;
- 2349 (11) in relation to an associate of the issuer of securities which have been admitted to the official list maintained by the competent authority for listing²⁸, the competent authority for listing²⁹;
- 2350 (12) in relation to a sponsor³⁰, the competent authority for listing³¹;
- 2351 (13) in relation to a key worker of the competent authority for listing, the competent authority for listing³²;
- 2352 (14) in relation to an associate of a person who has Pt IV permission and who is admitted to Lloyd's as an underwriting agent³³, the Council of Lloyd's³⁴, and the

- person with the Pt IV permission specified (or a person applying for such permission)³⁵;
- 2353 (15) in relation to an associate of the Council of Lloyd's, the Council of Lloyd's³⁶; and
- 2354 (16) in relation to any member (a 'specified member') of a United Kingdom recognised investment exchange or United Kingdom recognised clearing house, the investment exchange or clearing house specified; and in relation to any associate of a specified member (whether or not an individual), the specified member³⁷.

Additionally, the rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions³⁸, do not apply³⁹ in relation to any proceedings with respect to a decision or proposed decision of a specified person to dismiss an individual who has, or to fail to promote or exclude an individual who is seeking to obtain, a specified status, by reason of, or partly by reason of, a spent conviction or caution of that individual or of his associate for a relevant offence, or of any circumstances ancillary to such a conviction or caution or of a failure (whether or not by that individual) to disclose such a conviction or caution or any such circumstances, to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁴⁰. Also none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁴¹ apply to any such decision⁴². The specified persons, in relation to the statuses specified in the list below, are:

- 2355 (a) in relation to an approved person, the authorised person or the applicant for Pt IV permission who made the application for the Authority's approval in relation to the person mentioned⁴³;
- 2356 (b) in relation to the manager or trustee of an authorised unit trust scheme, the unit trust scheme⁴⁴;
- 2357 (c) in relation to a director of an open-ended investment company, the open-ended investment company⁴⁵;
- 2358 (d) in relation to an associate of the operator or trustee of a relevant collective investment scheme, the collective investment scheme⁴⁶;
- 2359 (e) in relation to an associate of a United Kingdom recognised investment exchange or United Kingdom recognised clearing house, the investment exchange or clearing house⁴⁷;
- 2360 (f) in relation to a controller of a person with Pt IV permission, the person with Pt IV permission⁴⁸;
- 2361 (g) in relation to an associate of a person who carries on a regulated activity but to whom the general prohibition does not apply, the Financial Services Authority⁴⁹;
- 2362 (h) in relation to an associate of a person who has Pt IV permission and who is admitted to Lloyd's as an underwriting agent, the Council of Lloyd's⁵⁰; and
- 2363 (i) in relation to an associate of any member of a United Kingdom recognised investment exchange or United Kingdom recognised clearing house, the investment exchange or clearing house specified⁵¹.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person to whom the question relates must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(g)(i) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g) amended by SI 2007/2149).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g) (as amended: see note 2).

4 As to the meaning of 'Pt IV permission' see the Financial Services and Markets Act 2000 s 40(4); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 348 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816)).

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(1) (as amended: see note 2). As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 6 et seq.

6 Ie under the Financial Services and Markets Act 2000 Pt V (ss 56-71) (performance of regulated activities: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 348 et seq).

7 Ie within the meaning of the Financial Services and Markets Act 2000 s 31(2): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 314.

8 Ie under the Financial Services and Markets Act 2000 s 59: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 367.

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(2) (as amended: see note 2). 'Associate', in relation to a person, means someone who is a controller, director or manager of that person or, where that person is a partnership, any partner of that person: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816). As to the meanings of 'controller', 'director' and 'manager' in this context see the Financial Services and Markets Act 2000 ss 417, 422, 423; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 86; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 591, 597 (definitions applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definitions added by SI 2001/3816)).

10 Ie within the meaning of the Financial Services and Markets Act 2000 s 237: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 603.

11 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(3) (as amended: see note 2).

12 As to the meaning of 'open-ended investment company' see the Financial Services and Markets Act 2000 s 236; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 603 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816)).

13 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(4) (as amended: see note 2).

14 As to the meaning of 'collective investment scheme' see the Financial Services and Markets Act 2000 s 235; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 603 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816)). 'Relevant collective investment scheme' means a collective investment scheme which is recognised under the Financial Services and Markets Act 2000 s 264 (schemes constituted in other EEA states: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 672), s 270 (schemes authorised in designated countries or territories: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 675) or s 272 (individually recognised overseas schemes: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 676): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816).

15 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(5) (as amended: see note 2).

16 'United Kingdom recognised investment exchange' means an investment exchange in relation to which a recognition order under the Financial Services and Markets Act 2000 s 290 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 709), otherwise than by virtue of s 292(2) (overseas investment exchanges: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 710), is in force: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816).

17 'United Kingdom recognised clearing house' means a clearing house in relation to which a recognition order under the Financial Services and Markets Act 2000 s 290 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49

(2008) PARA 709), otherwise than by virtue of s 292(2) (overseas investment exchanges: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 710), is in force: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816).

18 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(6) (as amended: see note 2).

19 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(7) (as amended: see note 2).

20 *Ie* within the meaning of the Financial Services and Markets Act 2000 s 22: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84.

21 *Ie* by virtue of the Financial Services and Markets Act 2000 s 327 (exemption from the general prohibition for members of a designated professional body: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 751).

22 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(8) (as amended: see note 2).

23 'Key worker', in relation to any body ('A'), means any individual who is likely, in the course of the duties of his office or employment:

1026 (1) where A is the Financial Services Authority, to play a significant role in the decision making process of the Authority in relation to the exercise of the Authority's public functions (within the meaning of the Financial Services and Markets Act 2000 s 349(5): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 479) under any provision of the Financial Services and Markets Act 2000 other than Pt VI (ss 72-103), or to support directly such a person (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816)); and

1027 (2) where A is the competent authority for listing, to play a significant role in the decision making process of the competent authority for listing in relation to the exercise of its functions under the Financial Services and Markets Act 2000 Pt VI, or to support directly such a person (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition as so added)).

24 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(9) (as amended: see note 2).

25 *Ie* within the meaning of the Financial Services and Markets Act 2000 Sch 17: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 576-578.

26 *Ie* within the meaning of the Financial Services and Markets Act 2000 s 225: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 575.

27 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(10) (as amended: see note 2).

28 *Ie* under the Financial Services and Markets Act 2000 s 74: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 387.

29 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(11) (as amended: see note 2). 'Competent authority for listing' means the competent authority for the purposes of the Financial Services and Markets Act 2000 Pt VI (ss 72-103) (listing: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 385 et seq): Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816).

30 *Ie* within the meaning of the Financial Services and Markets Act 2000 s 88(2): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 426.

31 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(12) (as amended: see note 2).

32 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(13) (as amended: see note 2).

33 *Ie* within the meaning of the Lloyd's Act 1982 s 2 (see **INSURANCE** vol 25 (2003 Reissue) PARAS 24-25).

34 'Council of Lloyd's' means the council constituted by the Lloyd's Act 1982 s 3 (see **INSURANCE** vol 25 (2003 Reissue) PARAS 24-25); Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816).

35 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(14) (as amended: see note 2).

36 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(15) (as amended: see note 2).

37 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(g)(16) (as amended: see note 2).

38 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

39 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

40 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259).

41 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

42 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(g), (h) (art 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(g), (h) added by SI 2001/3816; and amended by SI 2007/2149).

43 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(2), 4(g) (as amended and added: see notes 2, 42).

44 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(3), 4(g) (as amended and added: see notes 2, 42).

45 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(4), 4(g) (as amended and added: see notes 2, 42).

46 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(5), 4(g) (as amended and added: see notes 2, 42).

47 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(6), 4(g) (as amended and added: see notes 2, 42).

48 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(7), 4(g) (as amended and added: see notes 2, 42).

49 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(8), 4(h) (as amended and added: see notes 2, 42).

50 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(14), 4(h) (as amended and added: see notes 2, 42).

51 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, arts 3(g)(16), 4(h) (as amended and added: see notes 2, 42).

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694. Decisions of the Financial Services Authority.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to a decision or proposed decision by the Financial Services Authority³ of the kinds listed below to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁴. Further, none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁵ apply to any such decision by reason of, or partly by reason of, a spent conviction or caution of an individual, or of any circumstances ancillary to such a conviction or of a failure (whether or not by that individual) to disclose such a conviction or any such circumstances⁶.

The decisions are:

- 2364 (1) to refuse an application for Part IV permission⁷;
- 2365 (2) to vary or to cancel such permission (or to refuse to vary or cancel such permission) or to impose⁸ a requirement⁹;
- 2366 (3) to make, or to refuse to vary or revoke, prohibition orders¹⁰;
- 2367 (4) to refuse an application for the Authority's approval¹¹ or to withdraw such approval¹²;
- 2368 (5) to refuse to make, or to revoke, an order declaring a unit trust scheme to be an authorised unit trust scheme¹³ or to refuse to give its approval¹⁴ to a proposal to replace the manager¹⁵ or trustee¹⁶ of such a scheme¹⁷;
- 2369 (6) to give a direction¹⁸ in relation to an authorised unit trust scheme, or to vary (or to refuse to vary or revoke) such a direction¹⁹;
- 2370 (7) to refuse to make, or to revoke, an authorisation order²⁰ or to refuse to give its approval²¹ to a proposal to replace a director²² or to appoint an additional director of an open-ended investment company²³;
- 2371 (8) to give a direction to an open-ended investment company²⁴ or to vary (or refuse to vary or revoke) such a direction²⁵;
- 2372 (9) to refuse to give its approval to a collective investment scheme²⁶ being recognised²⁷ or to direct that such a scheme cease to be recognised by virtue of that provision or to refuse to make, or to revoke, an order²⁸ declaring a collective investment scheme to be a recognised scheme²⁹;
- 2373 (10) to refuse to make, or to revoke, a recognition order³⁰, or to give a direction³¹ to a United Kingdom recognised investment exchange³² or United Kingdom recognised clearing house³³;
- 2374 (11) to make, or to refuse to vary or to revoke, an order³⁴ in respect of members of a designated professional body in relation to the general prohibition³⁵; or
- 2375 (12) to dismiss, fail to promote or exclude a person from being a key worker³⁶ of the Financial Services Authority³⁷.

- 1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.
- 2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.
- 3 As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 6 et seq.
- 4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).
- 5 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.
- 6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d) (art 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d) added by SI 1986/2268; substituted by SI 2001/3816; and amended by SI 2007/2149).
- 7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(i) (as added, substituted and amended: see note 6). As to the meaning of 'Pt IV permission' see PARA 693 note 4.
- 8 Ie under the Financial Services and Markets Act 2000 s 43: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 353.
- 9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(ii) (as added, substituted and amended: see note 6).
- 10 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(iii) (as added, substituted and amended: see note 6). As to prohibition orders see the Financial Services and Markets Act 2000 s 56; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 364.
- 11 Ie under the Financial Services and Markets Act 2000 s 59: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 367.
- 12 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(iv) (as added, substituted and amended: see note 6).
- 13 Ie under the Financial Services and Markets Act 2000 s 243: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 608.
- 14 Ie under the Financial Services and Markets Act 2000 s 251: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 612.
- 15 As to the meaning of 'manager' see PARA 693 note 9.
- 16 As to the meaning of 'trustee', in relation to a unit trust scheme, see the Financial Services and Markets Act 2000 s 237; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 603 (definition applied by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2001/3816)).
- 17 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(v) (as added, substituted and amended: see note 6).
- 18 Ie under the Financial Services and Markets Act 2000 s 257: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 618.
- 19 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(vi) (as added, substituted and amended: see note 6).
- 20 Ie under the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 14: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 628, 629.
- 21 Ie under the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 21: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 631.
- 22 As to the meaning of 'director' see PARA 693 note 9.

23 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(vii) (as added, substituted and amended: see note 6).

24 Ie under the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 25: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 633.

25 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(viii) (as added, substituted and amended: see note 6).

26 As to the meaning of 'collective investment scheme' see PARA 693 note 14.

27 Ie under the Financial Services and Markets Act 2000 s 270: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 675.

28 Ie under the Financial Services and Markets Act 2000 s 272: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 676.

29 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(ix) (as added, substituted and amended: see note 6).

30 Ie under the Financial Services and Markets Act 2000 s 290, otherwise than by virtue of s 292(2): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 709, 710.

31 Ie under the Financial Services and Markets Act 2000 s 296: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 714.

32 As to the meaning of 'United Kingdom recognised investment exchange' see PARA 693 note 16.

33 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(x) (as added, substituted and amended: see note 6). As to the meaning of 'United Kingdom recognised clearing house' see PARA 693 note 17.

34 Ie under the Financial Services and Markets Act 2000 s 329: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 753.

35 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(xi) (as added, substituted and amended: see note 6).

36 As to the meaning of 'key worker' see PARA 693 note 23.

37 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(d)(xii) (as added, substituted and amended: see note 6).

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695. Decisions of the Financial Ombudsman Service.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to any decision or proposed decision by the scheme operator³ of the Financial Ombudsman Service to dismiss, or not to appoint, an individual as an ombudsman⁴ of the Financial Ombudsman Service by reason of, or partly by reason of, his spent conviction or caution, or of any circumstances ancillary to such a conviction or caution or of a failure (whether or not by that individual) to disclose such a conviction or caution or any such circumstances, to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁵. Further, none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁶ apply to any such decision⁷.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 Ie within the meaning of the Financial Services and Markets Act 2000 s 225: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 575.

4 Ie within the meaning of the Financial Services and Markets Act 2000 Sch 17: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 576-578.

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

6 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(e) (art 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(e) added by SI 2001/3816; and amended by SI 2007/2149).

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696. Decisions of the competent authority for listing.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to any decision or proposed decision by the competent authority for listing³:

- 2376 (1) to refuse an application for listing⁴ or to discontinue or suspend⁵ the listing of any securities⁶;
- 2377 (2) to refuse to grant a person's application for approval as a sponsor⁷ or to cancel such approval⁸; or
- 2378 (3) to dismiss, fail to promote or exclude a person from being a key worker⁹ of the competent authority for listing¹⁰,

by reason of, or partly by reason of, a spent conviction or caution of an individual, or of any circumstances ancillary to such a conviction or caution or of a failure (whether or not by that individual) to disclose such a conviction or caution or any such circumstances, to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto¹¹. Further, none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context¹² apply to any such decision¹³.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 As to the meaning of 'competent authority for listing' see PARA 693 note 29.

4 Ie under the Financial Services and Markets Act 2000 Pt VI (ss 72-103): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 385 et seq.

5 Ie under the Financial Services and Markets Act 2000 s 77: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 389.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(f)(i) (art 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(f) added by SI 2001/3816; and amended by SI 2007/2149).

7 Ie under the Financial Services and Markets Act 2000 s 88: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 426.

8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(f)(ii) (as added and amended: see note 6).

9 As to the meaning of 'key worker' see PARA 693 note 23.

10 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(f)(iii) (as added and amended: see note 5).

11 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

12 In the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

13 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(f) (as added and amended: see note 6).

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697. Decisions of the Council of Lloyd's.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to a decision or proposed decision of the Council of Lloyd's³:

- 2379 (1) to refuse to admit any person as, or to exclude, an underwriting agent⁴, where that person has, or who has applied for, Part IV permission⁵; or
 2380 (2) to dismiss, or to exclude a person from being, an associate of the Council of Lloyd's⁶,

by reason of, or partly by reason of, a spent conviction or caution of an individual, or of any circumstances ancillary to such a conviction or caution or of a failure (whether or not by that individual) to disclose such a conviction or caution or any such circumstances, to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁷. Further, none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁸ apply to any such decision⁹.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 As to the meaning of 'Council of Lloyd's' see PARA 693 note 34.

4 Ie within the meaning of the Lloyd's Act 1982 s 2 (see **INSURANCE** vol 25 (2003 Reissue) PARAS 24-25).

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(i)(i) (art 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(i) added by SI 2001/3816; and amended by SI 2007/2149). As to the meaning of 'Pt IV permission' see PARA 693 note 4.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(i)(ii) (as added and amended: see note 5).

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

8 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(i) (as added and amended: see note 5).

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698. Decisions of investment exchanges and clearing houses.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to a decision or proposed decision of a United Kingdom recognised investment exchange³ or United Kingdom recognised clearing house⁴ to refuse to admit any person as, or to exclude, a member by reason of, or partly by reason of, a spent conviction or caution of an individual, or of any circumstances ancillary to such a conviction or caution or of a failure (whether or not by that individual) to disclose such a conviction or caution or any such circumstances, to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁵. Further, none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁶ apply to any such decision⁷.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 As to the meaning of 'United Kingdom recognised investment exchange' see PARA 693 note 16.

4 As to the meaning of 'United Kingdom recognised clearing house' see PARA 693 note 17.

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

6 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(j) (art 4 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(j) added by SI 2001/3816; and amended by SI 2007/2149). As to the meaning of 'Pt IV permission' see PARA 693 note 4.

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699. Licences relating to the management of the National Lottery.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of the National Lottery Commission³ for the purpose of determining whether to grant or revoke a licence⁴ to run the National Lottery where the question relates to an individual:

- 2381 (1) who manages the business or any part of the business carried on under the licence (or who is likely to do so if the licence is granted)⁵; or
- 2382 (2) for whose benefit that business is carried on (or is likely to be carried on if the licence is granted)⁶.

The operation of the rehabilitation provisions is also restricted in relation to proceedings relating to licences to run the National Lottery⁷.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person to whom the question relates must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(h) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(h) added by SI 2002/441).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 As to the National Lottery Commission see **LICENSING AND GAMBLING** vol 67 (2008) PARA 7 et seq.

4 I.e. a licence under the National Lottery etc Act 1993 Pt 1 (ss 1-20): see **LICENSING AND GAMBLING** vol 68 (2008) PARA 691 et seq.

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(h)(i) (as added and amended: see note 2).

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(h)(ii) (as added and amended: see note 2).

7 See PARA 685.

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700. Licences for social work.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to a decision or proposed decision by the General Social Care Council or the Care Council for Wales³ to refuse to grant an application for registration as a social worker⁴ or to suspend, remove or refuse to restore a person's registration to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁵.

None of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁶ apply to any such decision by the Councils⁷, and none of the statutory protections for rehabilitated persons⁸ relating to the asking and answering of questions concerning past convictions or spent cautions⁹ apply in relation to any question asked by or on behalf of the Councils for the purpose of determining whether or not to grant an application for such registration¹⁰.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 See the Care Standards Act 2000 s 54; the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (definition added by SI 2003/965); and **SOCIAL SERVICES AND COMMUNITY CARE**.

4 Ie under the Care Standards Act 2000 Pt IV (ss 54-71): see **SOCIAL SERVICES AND COMMUNITY CARE**.

5 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149). For further restrictions in proceedings see PARA 685.

6 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(k) (amended by SI 2003/965).

8 As to the meaning of 'rehabilitated person' see PARA 660.

9 Ie the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person to whom the question relates must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(i) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(i) added by SI 2003/965).

10 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(i) (as added and amended: see note 9).

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701. Taxi driver licences.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to a decision or proposed decision to refuse to grant a taxi driver licence³, to grant such a licence subject to conditions or to suspend, revoke or refuse to renew such a licence, to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁴.

None of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁵ apply to any such decision⁶, and none of the statutory protections for rehabilitated persons⁷ relating to the asking and answering of questions concerning past convictions or spent cautions⁸ apply in relation to any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates or of any other person to hold, or to hold subject to a particular condition or restriction, taxi driver licences⁹.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 The licences referred to are those issued under:

1028 (1) the Town Police Clauses Act 1847 s 46 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARAS 1435, 1437) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (substituted by SI 1986/2268; amended by SI 2003/965));

1029 (2) the Metropolitan Public Carriage Act 1869 s 8 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1481) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (as so substituted and amended));

1030 (3) the Plymouth City Council Act 1975 s 9 (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (as so substituted and amended));

1031 (4) the Local Government (Miscellaneous Provisions) Act 1976 s 51 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1449) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (as so substituted and amended)); and

1032 (5) the Private Hire Vehicles (London) Act 1998 s 13 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1512) (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(1) (as so substituted and amended)).

4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149). For further restrictions in proceedings see PARA 685.

5 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(l) (added by SI 2003/965).

7 As to the meaning of 'rehabilitated person' see PARA 660.

8 In the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(a)(iv), Sch 2 para 4 (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 2 para 4 added by SI 2003/965).

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702. Licensing in the private security industry.

The rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions¹, do not apply² in relation to any proceedings with respect to a decision or proposed decision:

- 2383 (1) by the Security Industry Authority³ to refuse to grant a licence⁴ to engage in licensable conduct⁵, to grant such a licence subject to conditions, to modify such a licence (including any of the conditions of that licence) or to revoke such a licence⁶; or
- 2384 (2) by the Football Association or Football Association Premier League to refuse to approve a person as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as supervisor or manager of such a person, licensable conduct without a licence pursuant to the statutory exemptions⁷ from the licensing requirement⁸,

to the extent that there falls to be determined therein any issue relating to a person's spent conviction or caution or to circumstances ancillary thereto, and do not prevent, in any such proceedings, the admission or requirement of any evidence relating to a person's spent conviction or caution or to circumstances ancillary thereto⁹. Further, none of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context¹⁰ apply to any such decision¹¹.

None of the statutory protections for rehabilitated persons¹² relating to the asking and answering of questions concerning past convictions or spent cautions¹³ apply in relation to:

- 2385 (a) any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates or of any other person to hold, or to hold subject to a particular condition or restriction, a licence¹⁴ to engage in licensable conduct¹⁵ in the private security industry¹⁶; and
- 2386 (b) any question asked, by or on behalf of the Football Association, Football League or Football Association Premier League in order to assess the suitability of the person to whom the question relates or of any other person to be approved as able to undertake, in the course of acting as a steward at a sports ground at which football matches are played or as supervisor or manager of such a person, licensable conduct without a licence pursuant to the statutory exemptions¹⁷ from the licensing requirement¹⁸.

1 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663. As to spent convictions and spent cautions see PARAS 661, 662.

2 Ie by virtue of the Rehabilitation of Offenders Act 1974 s 7(4), Sch 2 para 6(1), (4), (5): see PARA 685 note 2.

3 As to the Security Industry Authority see the Private Security Industry Act 2001 s 1; and **TRADE AND INDUSTRY** vol 97 (2010) PARA 900.

4 le a licence under the Private Security Industry Act 2001 s 8: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 899.

5 le 'licensable conduct' within the meaning of the Private Security Industry Act 2001: see s 3(2); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 893.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(m) (added by SI 2003/965).

7 le the Private Security Industry Act 2001 s 4: see **TRADE AND INDUSTRY** vol 97 (2010) PARA 899 ET SEQ.

8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(n) (added by SI 2003/965).

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 5(1)(b), (c), (2) (amended by SI 2001/3816; SI 2007/2149; SI 2008/3259). Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149). For further restrictions in proceedings see PARA 685.

10 le the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

11 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(m), (n) (as added: see notes 6, 8).

12 As to the meaning of 'rehabilitated person' see PARA 660.

13 le the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) described in head (1) in the text to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

14 See note 4.

15 See note 5.

16 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(a)(iv), Sch 2 para 5 (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 2 para 5 added by SI 2003/965).

17 See note 7.

18 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(k) (added by SI 2006/2143; amended by SI 2006/3290).

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703. Firearms and explosives certificates.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person, in the course of duties of his office or employment, in order to assess the suitability of the person to whom the question relates or of any other person to hold, or to hold subject to a particular condition or restriction³:

- 2387 (1) firearms certificates and shot gun certificates⁴ issued under the Firearms Act 1968 and permits issued⁵ under the applicable legislation⁶; and
 2388 (2) explosives certificates issued by a chief officer of police⁷ as to the fitness of a person to keep explosives for private use⁸.

¹ As to the meaning of 'rehabilitated person' see PARA 660.

² I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(a).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

³ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(a)(iv) (art 3 amended by SI 2008/3259).

⁴ I.e. firearms certificates and shot gun certificates issued under the Firearms Act 1968: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 634-635.

⁵ I.e. under the Firearms Act 1968 ss 7(1), 9(2) or 13(1)(c): see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 646, 648, 657.

⁶ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 2 para 1. The operation of the rehabilitation provisions is also restricted in relation to specified proceedings relating to the dealing and use of firearms: see PARA 685.

⁷ I.e. pursuant to the Control of Explosives Regulations 1991, SI 2001/1531, regs 4, 7: see **EXPLOSIVES** vol 17(2) (Reissue) PARAS 967, 981.

⁸ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, Sch 2 para 3 (substituted by SI 2005/1082). The operation of the rehabilitation provisions is also restricted in relation to proceedings in relation to a person's fitness to acquire or acquire and keep explosives: see PARA 685.

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704. National security.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to:

- 2389 (1) any question asked by or on behalf of any person, in the course of his duties as a person employed in the service of the Crown, the United Kingdom Atomic Energy Authority³ or the Financial Services Authority⁴; and
 2390 (2) as from a day to be appointed, any question asked by or on behalf of the Civil Aviation Authority⁵ or specified providers of air traffic services⁶,

in order to assess, for the purpose of safeguarding national security, the suitability of the person to whom the question relates or of any other person for any office or employment⁷.

None of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁸ apply to any action taken for the purpose of safeguarding national security⁹.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662.

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 As to the United Kingdom Atomic Energy Authority see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1363 et seq.

4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(b) (amended by SI 2001/1149; SI 2001/3816; SI 2002/441; SI 2008/3259). As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 6 et seq.

5 As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(bb) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(bb) added, as from a day to be appointed, by SI 2002/441). The specified providers of air traffic services for this purpose are:

1033 (1) any person other than the Civil Aviation Authority authorised to provide air traffic services under the Transport Act 2000 s 4 or s 5 (see **AIR LAW** vol 2 (2008) PARAS 140, 141) (in any case where such person is a company, an 'authorised company') (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(bb)(ii) (as so amended and prospectively added));

1034 (2) any company which is a subsidiary (within the meaning given by the Companies Act 1985 s 736(1) (repealed by the Companies Act 2006 s 1295, Sch 16, and replaced by s 1159): see **COMPANIES** vol 14 (2009) PARA 25) of an authorised company (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(bb)(iii) (as so amended and prospectively added)); or

1035 (3) any company of which an authorised company is a subsidiary (Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(bb)(iv) (as so amended and prospectively added)).

7 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(b), (bb) (as amended and prospectively added: see notes 4, 6). For the exception from the operation of the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3) to apply in this context, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed for the purpose of safeguarding national security: art 3(b), (bb) (as so amended and prospectively added). In connection with subsidiary companies and companies of which an authorised company is a subsidiary (see note 6), the question must be put in relation to the provision of air traffic services: art 3(bb) (as so amended and prospectively added).

8 Ie the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

9 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4(c) (amended by SI 2008/3259).

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705. Adoption.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply in relation to any question asked by or on behalf of any person in the course of his duties as a person employed by an adoption agency³ for the purpose of assessing the suitability of any person to adopt children in general or a child in particular where the question relates either to the person whose suitability is being assessed or to a person over the age of 18 living in the same household as the person whose suitability is being assessed⁴.

¹ As to the meaning of 'rehabilitated person' see PARA 660.

² In the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person to whom the question relates must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions or cautions are to be disclosed: art 3(e) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(e) added by SI 2001/1192).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

³ As to adoption agencies see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 339 et seq.

⁴ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(e) (as added and amended: see note 2).

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706. Award of public works contracts and utilities contracts.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions² apply in relation to any question asked by or on behalf of a contracting authority³ or contracting entity⁴ in relation to a conviction⁵ which is a spent conviction (or any circumstances ancillary to such a conviction) for the purpose of determining whether or not to treat a person as ineligible for participating in the processes of tendering for public service contracts or public utilities contracts⁶ or for participating in design contests⁷ pursuant to the award of such contracts⁸.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 Ie the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, convictions within the meaning of EC Council Directive 2004/18 (OJ L134, 30.04.04, p 114) on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, art 45.1, are to be disclosed: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(j) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(j) added by SI 2006/2143).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 Ie within the meaning of EC Council Directive 2004/18 (OJ L134, 30.04.04, p 114), art 1.9.

4 Ie within the meaning of EC Council Directive 2004/17 (OJ L134, 30.04.04, p 1) coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, art 2.2.

5 Ie within the meaning of EC Council Directive 2004/18 (OJ L134, 30.04.04, p 114), art 45.1.

6 Ie for the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 23 or the Utilities Contracts Regulations 2006, SI 2006/6, reg 23.

7 Ie for the purposes of the Public Contracts Regulations 2006, SI 2006/5, reg 33 or the Utilities Contracts Regulations 2006, SI 2006/6, reg 34.

8 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(j) (as added and amended: see note 2).

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707. Criminal record certificates and enhanced criminal record certificates.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions and cautions² apply in relation to any question asked by the Secretary of State for the purpose of considering the suitability of an individual to have access to information released³ pursuant to the issuing of criminal record certificates and enhanced criminal record certificates⁴.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662.

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 I.e. released under the Police Act 1997 s 113A or s 113B: see PARAS 712, 713.

4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(l) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(l) added by SI 2007/2149).

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708. Locksmiths.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions and cautions² apply in relation to any question asked by or on behalf of the Master Locksmiths Association for the purposes of assessing the suitability of any person who has applied to be granted membership of that Association³.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662.

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(m) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(m) added by SI 2009/1818).

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709. Licences to produce and supply controlled drugs.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions and cautions² apply in relation to any question asked by or on behalf of the Secretary of State for the purpose of assessing the suitability of any person or body to obtain or retain a licence³ for the production and supply of controlled drugs where the question relates to the holder of, or an applicant for, such a licence or any person who as a result of his role in the company or other body concerned is required to be named in the application for such a licence (or would have been so required if that person had had that role at the time the application was made)⁴.

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that, by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, spent convictions are to be disclosed: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(n)(ii) (art 3 amended by SI 2008/3259; Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(n) added by SI 2009/1818).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 I.e. under the Misuse of Drugs Regulations 2001, SI 2001/3998, reg 5 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARAS 250, 251, 253), under EC Council Regulation 2004/273 (OJ L47, 18.2.2004, p 1) on drug precursors, art 3(2), or under EC Council Regulation 2005/111 (OJ L22, 26.1.2005, p 1) laying down rules for the monitoring of trade between the Community and third countries in drug precursors, art 6(1).

4 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3(n)(i) (as amended and added: see note 2).

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710. Exclusion relating to the Channel Islands.

None of the statutory protections for rehabilitated persons¹ relating to the asking and answering of questions concerning past convictions or spent cautions² apply to a question asked by or on behalf of any person in the course of the duties of that person's office or employment in the Channel Islands in order to assess the person's suitability for the purposes of the employment-related limitations and restrictions on the statutory rehabilitation provisions³ where the person asking the question states that a corresponding question and purpose are also provided for in corresponding Channel Islands legislation⁴ and the person to whom the question relates is a person to whom those limitations and restrictions⁵ would apply⁶.

Neither the rehabilitation principle, and the concomitant exclusions of evidence and questioning as to spent convictions and cautions⁷, nor any of the statutory protections relating to the non-disclosure of spent convictions or spent cautions in an employment context⁸, apply to a question asked by or on behalf of any person in the course of that person's office or employment in the Channel Islands for a purpose mentioned in, or in respect of a specified case or class of case and conviction⁹, where the person asking the question states that a corresponding purpose or case or class of case and conviction is provided for in corresponding Channel Islands legislation¹⁰ and the person to whom the question relates is a person to whom the applicable provisions¹¹ would apply¹².

1 As to the meaning of 'rehabilitated person' see PARA 660.

2 I.e. the Rehabilitation of Offenders Act 1974 s 4(2), Sch 2 para 3(3): see PARA 664. As to spent convictions and spent cautions see PARAS 661, 662. For the exception from the operation of s 4(2), Sch 2 para 3(3) to apply, the person questioned must be informed at the time the question is asked that spent convictions are to be disclosed: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 6(2)(b) (art 6 added by SI 2009/1818).

Where the operation of any of the provisions of the Rehabilitation of Offenders Act 1974 is excluded in relation to spent convictions, the exclusion is to be taken to extend to spent convictions for offences of every description: Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 2(2) (substituted by SI 1986/2268; amended by SI 2007/2149).

3 I.e. any of the purposes referred to in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 3: see PARAS 687-709.

4 I.e. the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 and the Rehabilitation of Offenders (Bailiwick of Guernsey) Law 2002 (Commencement, Exclusions and Exceptions) Ordinance 2006 (neither of which are statutory instruments).

5 See note 3.

6 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 6(1), (2)(a) (as added: see note 2).

7 See the Rehabilitation of Offenders Act 1974 s 4(1), Sch 2 para 3(1); and PARAS 660, 663.

8 I.e. the Rehabilitation of Offenders Act 1974 s 4(3)(b), Sch 2 para 3(5): see PARA 666.

9 I.e. a case or class of case and conviction specified in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4 or art 5: see PARA 693 et seq.

10 See note 4.

11 le the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 4 or art 5: see PARA 693 et seq.

12 Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, SI 1975/1023, art 6(3), (4) (as added: see note 2).

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(2) CRIMINAL RECORD CHECKS

(i) Criminal Conviction Certificates and Criminal Record Certificates

711. Criminal conviction certificates.

A 'criminal conviction certificate' is a certificate¹ which gives the prescribed details² of every conviction³ of the applicant which is recorded in central records⁴, or states that there is no such conviction⁵. As from a day to be appointed⁶ a criminal conviction certificate may also contain details as to the applicant's immigration status⁷.

1 'Certificate' means any one or more documents issued in response to a particular application: Police Act 1997 s 126(1).

2 At the date at which this volume states the law no details had been prescribed for these purposes.

3 'Conviction' means a conviction within the meaning of the Rehabilitation of Offenders Act 1974 (see PARA 660 note 3), other than a spent conviction (see PARA 661): Police Act 1997 s 112(3).

4 Police Act 1997 s 112(2)(a). At the date at which this volume states the law s 112 had not been brought into force in England and Wales. 'Central records' means such records of convictions and conditional cautions held for the use of police forces generally as may be prescribed: s 112(3) (not yet in force; amended by the Criminal Justice and Immigration Act 2008 s 50(1), (2)). 'Conditional caution' means a caution given under the Criminal Justice Act 2003 s 22 (conditional cautions for adults: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1044) or under the Crime and Disorder Act 1998 s 66A (conditional cautions for children and young persons: see **CHILDREN AND YOUNG PERSONS**), other than one that is spent for the purposes of the Rehabilitation of Offenders Act 1974 Sch 2 (see PARA 662) (Police Act 1997 s 112(3) (not yet in force; as so amended)); and 'caution' means a caution given to a person in England and Wales or Northern Ireland in respect of an offence which, at the time when the caution is given, he has admitted (s 126(1)).

5 Police Act 1997 s 112(2)(b) (not yet in force).

6 The Police Act 1997 s 113CD (see note 7) is added, as from a day to be appointed, by the Policing and Crime Act 2009 s 94. At the date at which this volume states the law no day had been appointed for the coming into force of this amendment.

7 As from a day to be appointed where:

1036 (1) an application for a criminal conviction certificate under the Police Act 1997 s 112 (see PARA 716), an application for a criminal record certificate under s 113A (see PARAS 712, 716) or an application for an enhanced criminal record certificate under s 113B (see PARAS 713, 716) contains a request for the information referred to herein (ie information under s 113CD) (s 113CD(1)(a) (prospectively added: see note 6));

1037 (2) in the case of an application for a certificate under s 112, the application contains a statement that the information is sought for the purposes of employment with a person specified in the application (s 113CD(1)(b) (as so prospectively added)); and

1038 (3) the applicant pays in the prescribed manner any additional fee prescribed in respect of the application (s 113CD(1)(c) (as so prospectively added)),

the certificate must state whether according to records held by the Secretary of State the applicant is subject to immigration control (s 113CD(2)(a) (as so prospectively added)) or that records held by the Secretary of State do not show whether the applicant is subject to immigration control (s 113CD(2)(b) (as so prospectively added)). For these purposes a person is subject to immigration control if under the Immigration Act 1971 (see

BRITISH NATIONALITY, IMMIGRATION AND ASYLUM) the person requires leave to enter or remain in the United Kingdom: Police Act 1997 s 113CD(8) (as so prospectively added). If the records show that the applicant is subject to immigration control, the certificate must state whether according to the records the applicant has been granted leave to enter or remain in the United Kingdom (s 113CD(3)(a) (as so prospectively added)) or that the records do not show whether the applicant has been granted leave to enter or remain in the United Kingdom (s 113CD(3)(b) (as so prospectively added)); and if the records show that the applicant has been granted leave to enter or remain in the United Kingdom, the certificate must state whether according to the records the applicant's leave to enter or remain in the United Kingdom is current (s 113CD(4)(a) (as so prospectively added)) or that the records do not show whether the applicant's leave to enter or remain in the United Kingdom is current (s 113CD(4)(b) (as so prospectively added)). If the records show that the applicant has been granted leave to enter or remain in the United Kingdom and that it is current, the certificate must also state any conditions to which the leave to enter or remain is subject and which relate to the applicant's employment: s 113CD(5) (as so prospectively added).

A certificate under s 113CD must contain such advice as the Secretary of State thinks appropriate about where to obtain further information about the matters mentioned in s 113CD(2)-(5): s 113CD(6) (as so prospectively added).

For these purposes a person's leave to enter or remain in the United Kingdom is current unless it is invalid (s 113CD(7)(a) (as so prospectively added)) or it has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) (s 113CD(7)(b) (as so prospectively added)).

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712. Criminal record certificates.

A 'criminal record certificate' is a certificate¹ which gives the prescribed details of every conviction and caution² relating to the applicant which is recorded in central records³ or states that there is no such matter⁴. Suitability information relating to children and vulnerable adults may no longer be given on criminal record certificates⁵, although such information may continue to be given, where applicable, on enhanced criminal record certificates⁶. As from a day to be appointed a criminal record certificate may contain details as to the applicant's immigration status⁷.

1 As to the meaning of 'certificate' see PARA 711 note 1.

2 The prescribed details of every conviction within the meaning of the Rehabilitation of Offenders Act 1974 (see PARA 660 note 3), including spent convictions (see PARA 661), and every caution including cautions that are spent for the purposes of Sch 2 (see PARA 662): Police Act 1997 ss 113A(6), 113B(9) (ss 113A-113D, 113F added by the Serious Organised Crime and Police Act 2005 s 163(2); Police Act 1997 s 113A(6) amended by the Criminal Justice and Immigration Act 2008 s 50(1), (3)). These convictions and cautions are described as 'relevant matters' for these purposes: Police Act 1997 s 113A(6) (as so added and amended). The Secretary of State may by order amend this definition (s 113A(7) (s 113A as so added; s 113A(7) added by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (2))).

By virtue of the Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5, the prescribed details for these purposes are:

1039 (1) in the case of a conviction including a spent conviction:

23. (a) the date of conviction;

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24. (b) the convicting court;

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25. (c) the offence; and

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26. (d) the method of disposal for the offence including details of any order made under the Criminal Justice and Court Services Act 2000 Pt 2 (ss 26-42) (protection of children: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 663 et seq); and

27

1040 (2) in the case of a caution, reprimand or warning:

27. (a) the date of caution, reprimand or warning;

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28. (b) the place where the caution, reprimand or warning was issued; and

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29. (c) the offence which the person issued with a caution, reprimand or warning had admitted.

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'Reprimand' and 'warning' mean a reprimand or a warning given to a child or young person in accordance with the Crime and Disorder Act 1998 s 65 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1235); Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 2.

The Secretary of State may, to such extent and subject to such conditions as he thinks fit, delegate any relevant function of his under the Police Act 1997 Pt V (ss 112-127) to such person as he may determine, and a function is 'relevant' for this purpose if it does not consist of a power to make regulations or to publish or revise a code of practice or to lay any such code before Parliament: s 122A(1), (2) (s 122A added by the Criminal Justice Act 2003 Sch 35 paras 1, 10). Any such delegation may be varied or revoked at any time: Police Act 1997 s 122A(3).

3 Police Act 1997 s 113A(3)(a) (as added: see note 2). 'Central records' for these purposes means information in any form relating to convictions, cautions, reprimands and warnings on a names database held by the National Policing Improvement Agency for the use of constables: ss 113A(6), 113B(9) (as so added); Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 9 (substituted by SI 2007/700). The Secretary of State may by order amend this definition: s 113A(7) (as so added).

4 Police Act 1997 s 113A(3)(b) (as added: see note 2).

5 The Police Act 1997 ss 113C, 113D, 113F, which made provision for the inclusion of suitability information relating to children and vulnerable adults on criminal record certificates, were repealed by the Safeguarding Vulnerable Groups Act 2006 Sch 10.

6 See PARA 713.

7 See the Police Act 1997 s 113CD; and PARA 711 notes 6, 7.

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713. Enhanced criminal record certificates.

An 'enhanced criminal record certificate' is a certificate¹ which gives the prescribed details of every conviction and caution² relating to the applicant which is recorded in central records³ and specified additional information where applicable⁴ or states that there is no such matter or information⁵.

An enhanced criminal record certificate must also include such suitability information relating to children and vulnerable adults as may be prescribed⁶. 'Suitability information relating to children'⁷ is:

- 2391 (1) whether the applicant is barred⁸ from regulated activity⁹ relating to children¹⁰;
- 2392 (2) if the applicant is barred from such activity, such details as are prescribed of the circumstances in which he became barred¹¹;
- 2393 (3) whether the applicant is subject to monitoring¹² in relation to regulated activity relating to children¹³;
- 2394 (4) whether the Independent Safeguarding Authority¹⁴ is considering whether to include¹⁵ the applicant in the children's barred list¹⁶; and
- 2395 (5) whether the applicant is subject to a direction¹⁷ prohibiting him from participation in school management¹⁸.

'Suitability information relating to vulnerable adults'¹⁹ is:

- 2396 (a) whether the applicant is barred from regulated activity relating to vulnerable adults²⁰;
- 2397 (b) if the applicant is barred from such activity, such details as are prescribed of the circumstances in which he became barred²¹;
- 2398 (c) whether the applicant is subject to monitoring in relation to regulated activity relating to vulnerable adults²²;
- 2399 (d) whether the Independent Safeguarding Authority is considering whether to include²³ the applicant in the adults' barred list²⁴.

As from a day to be appointed an enhanced criminal record certificate may also contain details as to the applicant's immigration status²⁵. Additional information may also accompany enhanced criminal record certificates²⁶.

1 As to the meaning of 'certificate' see PARA 711 note 1.

2 See PARA 712 note 2.

3 As to the meaning of 'central records' see PARA 712 note 3.

4 Police Act 1997 s 113B(3)(a) (ss 113B-113D added by the Serious Organised Crime and Police Act 2005 s 163(2)). Before issuing an enhanced criminal record certificate the Secretary of State must request the chief officers of relevant police forces to provide any information which, in the chief officer's opinion, might be relevant for the purpose described in the statement under the Police Act 1997 s 113B(2) (see PARA 716) and

ought to be included in the certificate, and any information so provided must be given in the certificate: see s 113B(4); and PARA 715. As to the delegation of the Secretary of State's functions see PARA 712 note 2.

5 Police Act 1997 s 113B(3)(b) (as added: see note 4).

6 Police Act 1997 ss 113BA(1), 113BB(1) (ss 113BA-113BC added by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (4)).

7 The Secretary of State may by order made by statutory instrument amend the Police Act 1997 s 113BA for the purpose of altering the meaning of 'suitability information relating to children': s 113BC(1)(a) (as added: see note 6). At the date at which this volume states the law no such order had been made.

8 As to the meaning of 'barred' see the Safeguarding Vulnerable Groups Act 2006 s 3; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 685 (definition applied by the Police Act 1997 ss 113BA(3), (4), 113BB(3), (4) (as added: see note 6)).

9 As to the meaning of 'regulated activity' see the Safeguarding Vulnerable Groups Act 2006 s 5; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 687 (definition applied by the Police Act 1997 s 113BA(3), (4), 113BB(3), (4) (as added: see note 6)).

10 Police Act 1997 s 113BA(2)(a) (as added: see note 6). As to the meaning of 'children' see the Safeguarding Vulnerable Groups Act 2006 s 60; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 675 (definition applied by the Police Act 1997 s 113BA(3), (4) (as so added)).

11 Police Act 1997 s 113BA(2)(b) (as added: see note 6). See the Police Act 1997 (Criminal Records) (No 2) Regulations 2009, SI 2009/1882; and PARA 714.

12 As to the meaning of 'monitoring' see the Safeguarding Vulnerable Groups Act 2006 s 24; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 697 (definition applied by the Police Act 1997 ss 113BA(3), (4), 113BB(3), (4) (as added: see note 8)).

13 Police Act 1997 s 113BA(2)(c) (as added: see note 6).

14 As to the Independent Safeguarding Authority (formerly the Independent Barring Board) see the Safeguarding Vulnerable Groups Act 2006 s 1; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 675.

15 In pursuance of the Safeguarding Vulnerable Groups Act 2006 Sch 3 para 3 or para 5: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 681.

16 Police Act 1997 s 113BA(2)(d) (as added: see note 6). As to the children's barred list see the Safeguarding Vulnerable Groups Act 2006 s 2; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 681 (applied by the Police Act 1997 s 113BA(3), (4) (as so added)).

17 In under the Education and Skills Act 2008 s 128 (prohibition on participation in management of independent educational institution in England: see **EDUCATION**) or the Education Act 2002 s 167A (prohibition on participation in management of independent school in Wales: see **EDUCATION**).

18 Police Act 1997 s 113BA(2)(e) (as added (see note 6); further added by the Education and Inspections Act 2006 s 170(2); and amended by the Education and Skills Act 2008 Sch 1 para 12).

19 The Secretary of State may by order made by statutory instrument amend the Police Act 1997 s 113BB for the purpose of altering the meaning of 'suitability information relating to vulnerable adults': s 113BC(1)(b) (as added: see note 6). At the date at which this volume states the law no such order had been made.

20 Police Act 1997 s 113BB(2)(a) (as added: see note 6). As to the meaning of 'vulnerable adult' see the Safeguarding Vulnerable Groups Act 2006 s 59; and **SOCIAL SERVICES AND COMMUNITY CARE** (applied by the Police Act 1997 s 113BB(3), (4) (as so added)).

21 Police Act 1997 s 113BB(2)(b) (as added: see note 6). At the date at which this volume states the law no such details had been prescribed.

22 Police Act 1997 s 113BB(2)(c) (as added: see note 6).

23 In pursuance of the Safeguarding Vulnerable Groups Act 2006 Sch 3 para 9 or Sch 3 para 11: see **SOCIAL SERVICES AND COMMUNITY CARE**.

24 Police Act 1997 s 113BB(2)(d) (as added: see note 6). As to the adult's barred list see the Safeguarding Vulnerable Groups Act 2006 s 2; and **SOCIAL SERVICES AND COMMUNITY CARE** (applied by the Police Act 1997 s 113BB(3), (4) (as so added)).

25 See the Police Act 1997 s 113CD; and PARA 711 notes 6, 7.

26 See PARA 715.

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714. Purposes for which enhanced criminal record certificates may be required.

The purposes for which an enhanced criminal record certificate¹ may be required² are:

- 2400 (1) considering the applicant's suitability to engage in any activity which is a regulated activity relating to children³, or for a position which otherwise involves regularly caring for, training, supervising or being solely in charge of, persons aged under 18⁴;
- 2401 (2) considering the applicant's suitability to engage in any activity which is a regulated activity relating to vulnerable adults⁵, or for a position which otherwise involves regularly caring for, training, supervising or being solely in charge of vulnerable adults⁶;
- 2402 (3) considering the applicant's suitability for a position which is concerned with the representation of, or advocacy services for, vulnerable adults, by a service which has been approved by the Secretary of State or created by or under any enactment, and which is of such a kind as to enable a person, in the course of his normal duties in that position, to have access to such adults when they are receiving such services⁷;
- 2403 (4) obtaining or holding an operating licence⁸ or a personal licence⁹ for the provision of gambling services¹⁰;
- 2404 (5) considering an individual's suitability for a position as Commissioner for the Gambling Commission¹¹ and for any office or employment in the Commissioners' service¹²;
- 2405 (6) obtaining or holding a licence¹³ to run or promote the National Lottery¹⁴;
- 2406 (7) registration for child minding or providing day care¹⁵, including assessing the suitability of any person to have regular contact with children who is aged 16 or over and living on the premises at which the child minding or day care is being or is to be provided, or aged 16 or over and working, or who will be working, on the premises at which the child minding or day care is being or is to be provided at times when such child minding or day care is being or is to be provided¹⁶;
- 2407 (8) registration¹⁷ in connection with the provision of childcare in England, including assessing the suitability of any person to have regular contact with children who is aged 16 or over and living on the premises at which the childcare is being or is to be provided, or aged 16 or over and working on the premises at which the childcare is being or is to be provided at times when such childcare is being or is to be provided¹⁸;
- 2408 (9) the registration¹⁹ of nursing homes and residential homes²⁰;
- 2409 (10) the registration²¹ of social care workers²²;
- 2410 (11) placing children with foster parents²³, including obtaining information in respect of any person who is: (a) aged 18 or over and living in the same household as a person who is, or who wishes to be approved as, a foster parent²⁴; or (b) aged 16 or over and living in the same household as a person who fosters, or intends to foster, a child privately²⁵ or who is otherwise a private foster parent²⁶;
- 2411 (12) a decision made by an adoption agency²⁷ as to a person's suitability to adopt a child, including obtaining information in respect of any person aged 18 years or over living in the same household as the prospective adopter²⁸;

- 2412 (13) considering an individual's suitability for working in the Department for Children, Schools and Families, the Office for Standards in Education, Children's Services and Skills or in the government offices for the English Regions with access to sensitive or personal information about children or vulnerable adults²⁹;
- 2413 (14) considering an individual's suitability for any office, employment or other work which is concerned with the establishment or operation of a database³⁰ relating to the provision of children's services and which is of such a kind as to enable the holder of that office or employment, or the person engaged in that work, to have access to information included in the database³¹;
- 2414 (15) considering an individual's suitability for any office, employment or other work which is of such a kind that the person is or may be permitted or required to be given access to a database relating to the provision of children's services³²;
- 2415 (16) considering an individual's suitability for a position working within the Office of the Public Guardian with access to data relating to children and vulnerable adults³³;
- 2416 (17) considering the suitability of any person appointed by the Commissioner for Older People in Wales to assist him in the discharge of his functions or authorised to discharge his functions on his behalf³⁴; and
- 2417 (18) considering the applicant's suitability for work as a person who provides immigration advice or services³⁵ and is a registered person³⁶, or a person who acts on behalf of and under the supervision of such a registered person, or a person who is exempt³⁷;
- 2418 (19) considering the applicant's suitability to obtain or retain a licence³⁸ where the question relates to any person who as a result of his role in the body concerned is required to be named in the application for such a licence (or would have been so required if that person had had that role at the time the application was made)³⁹; or
- 2419 (20) considering the applicant's suitability for any office or employment or other work in the Criminal Records Bureau⁴⁰.

1 As to the meaning of 'enhanced criminal record certificate' see PARA 713. As to the duty of Secretary of State to issue certificates see PARA 717. As to the delegation of the Secretary of State's functions see PARA 712 note 2.

2 Ie in accordance with a statement made by a registered person under the Police Act 1997 s 113B(2)(b): see PARA 716. As to registered persons see PARAS 721-727.

3 Ie within the meaning of the Safeguarding Vulnerable Groups Act 2006 Sch 4 Pt 1 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 687).

4 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(a) (reg 5A added by SI 2006/748; and the Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(a), (b) substituted by SI 2009/1882).

5 Ie within the meaning of the Safeguarding Vulnerable Groups Act 2006 Sch 4 Pt 2: see **SOCIAL SERVICES AND COMMUNITY CARE**.

6 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(b) (as added and substituted: see note 4). As to the meaning of 'vulnerable adult' see the Safeguarding Vulnerable Groups Act 2006 s 59; and **SOCIAL SERVICES AND COMMUNITY CARE**.

7 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(ba) (reg 5A as added (see note 4); and reg 5A(ba) added by SI 2006/2181).

8 Ie under the Gambling Act 2005 Pt 5 (ss 65-126) (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 349 et seq) for the purposes of that Act.

9 Ie under the Gambling Act 2005 Pt 6 (ss 127-139) (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 400 et seq) for the purposes of that Act.

- 10 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(c), (d) (as added (see note 4); and substituted by SI 2007/1892).
- 11 See **LICENSING AND GAMBLING** vol 67 (2008) PARA 4 et seq.
- 12 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(e) (as added (see note 4); and substituted by SI 2007/1892).
- 13 Ie under the National Lottery etc Act 1993 s 5 or 6: see **LICENSING AND GAMBLING** vol 68 (2008) PARAS 691-692, 694.
- 14 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(f) (as added: see note 4).
- 15 Ie under the Children Act 1989 Pt XA (ss 79A-79X) (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1072 et seq).
- 16 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(g) (as added (see note 4); and substituted by SI 2009/1882).
- 17 Ie under the Childcare Act 2006 Pt 3 Ch 2, 3 or 4 (ss 33-67): see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1117 et seq.
- 18 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(ga) (reg 5A as added (see note 4); and reg 5A(ga) added by SI 2008/2143; and amended by SI 2009/1882).
- 19 Ie under the Care Standards Act 2000 Pt II (ss 11-42): see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 20 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(h) (as added: see note 4).
- 21 Ie under the Care Standards Act 2000 Pt IV (ss 54-71): see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 22 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(i) (as added: see note 4).
- 23 Ie in accordance with any provision of, or made by virtue of, the Children Act 1989 or corresponding Northern Irish legislation or the exercise of any duty under or by virtue of s 67 (see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1058 et seq) or corresponding Northern Irish legislation.
- 24 Ie within the meaning of the Safeguarding Vulnerable Groups Act 2006 s 53(7)(a) or (b): see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 25 Ie within the meaning of the Children Act 1989 s 66(1): see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1049.
- 26 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(j) (as added (see note 4); and amended by SI 2009/1882). The text refers to a private foster parent within the meaning of the Safeguarding Vulnerable Groups Act 2006 s 53(7)(c), (8): see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 27 Ie within the meaning of the Adoption and Children Act 2002 s 2: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 394-395.
- 28 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(k) (as added (see note 4); and amended by SI 2009/1882).
- 29 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(p) (reg 5A as added (see note 4); reg 5A(p)-(r), (u)-(w) added by SI 2007/2181; and the Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(p) amended by SI 2007/3224).
- 30 Ie under the Children Act 2004 s 12: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 188.
- 31 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(q) (as added: see notes 4, 29).
- 32 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(r) (as added: see notes 4, 29).
- 33 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(u) (as added: see notes 4, 29).
- 34 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(v) (as added (see notes 4, 29); and amended by SI 2009/1882).

35 le as defined in the Immigration and Asylum Act 1999 s 82(1) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 169).

36 le under the Immigration and Asylum Act 1999 Pt 5 (ss 82-93) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 169-172).

37 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(x) (as added (see note 4); and amended by SI 2009/1882). The text refers to a person who is exempt under the Immigration and Asylum Act 1999 s 84(4)(a)-(c) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 170).

38 le under the Misuse of Drugs Regulations 2001, SI 2001/3998, reg 5 (see **MEDICINAL PRODUCTS AND DRUGS** vol 30(2) (Reissue) PARAS 250-251, 253), or EC Council Regulation 2004/273 (OJ L47, 18.2.2004, p 1) on drug precursors, art 3(2), or EC Council Regulation 2005/111 (OJ L22, 26.1.2005, p 1) art 6(1).

39 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(y) (reg 5A as added (see note 4); and reg 5A(y) added by SI 2009/1882).

40 Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 5A(z) (reg 5A as added (see note 4); and reg 5A(z) added by SI 2009/1882).

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715. Additional information to accompany enhanced criminal record certificates.

Before issuing an enhanced criminal record certificate¹ the Secretary of State must request the chief officer of every relevant police force² to provide any information³ which, in the chief officer's opinion, might be relevant⁴ for the purposes of the application⁵ and either:

- 2420 (1) ought to be included in the certificate⁶; or
- 2421 (2) ought not to be included in the certificate, in the interests of the prevention or detection of crime, and can, without harming those interests, be disclosed to the registered person⁷.

1 As to the meaning of 'criminal record certificate' see PARA 712. As to the duty of the Secretary of State to issue certificates see PARA 717.

2 The 'relevant police force' in relation to any particular application is:

- 1041 (1) the police force maintained for the police area in England and Wales within which the applicant resides or has resided within the period of five years preceding the date of the application (Police Act 1997 s 113B(9) (s 113B added by the Serious Organised Crime and Police Act 2005 s 163(2)); Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(a));
- 1042 (2) the British Transport Police (reg 10(aa) (added by SI 2006/2181));
- 1043 (3) the Police Service of Northern Ireland if the applicant resides or has resided within the period of five years preceding the date of the application within Northern Ireland (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(b));
- 1044 (4) the States of Jersey Police Force if the applicant resides or has resided within the period of five years preceding the application within Jersey (reg 10(ba) (added by SI 2006/748));
- 1045 (5) the salaried police force of the Island of Guernsey if the applicant resides or has resided within the period of five years preceding the application within Guernsey (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(bb) (added by SI 2006/748));
- 1046 (6) the Isle of Man Constabulary if the applicant resides or has resided within the period of five years preceding the application within the Isle of Man (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(bc) (added by SI 2006/748));
- 1047 (7) such of the police forces referred to in heads (1)-(6) above as appear to the Secretary of State to be in possession of information regarding the applicant (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(bd) (added by SI 2006/748));
- 1048 (8) such other police force as the chief officer of police of a police force identified as a relevant police force by virtue of head (1), (2) or (3) above determines (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(c) (amended by SI 2006/2181)); and
- 1049 (9) the Criminal Records Bureau, if there is no UK residence address within the last five years provided on the application, and no other police force appears to the Secretary of State to be relevant to the application (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(ca) (added by SI 2009/460));
- 1050 (10) any police force that the Secretary of State determines to be relevant to the application (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 10(d)),

and may include any of:

- 1051 (a) the Royal Navy Police (Police Act 1997 s 113B(10)(a) (as so added; substituted by the Armed Forces Act 2006 Sch 16 para 149));
- 1052 (b) the Royal Military Police (Police Act 1997 s 113B(10)(c) (as so added));
- 1053 (c) the Royal Air Force Police (s 113B(10)(d) (as so added));
- 1054 (d) the Ministry of Defence Police (s 113B(10)(e) (as so added));
- 1055 (e) the National Criminal Intelligence Service (abolished) (s 113B(10)(f) (as so added));
- 1056 (f) the National Crime Squad (abolished) (s 113B(10)(g) (as so added));
- 1057 (g) the British Transport Police (s 113B(10)(h) (as so added));
- 1058 (h) the Civil Nuclear Constabulary (s 113B(10)(i) (as so added));
- 1059 (i) the States of Jersey Police Force (s 113B(10)(j) (as so added));
- 1060 (j) the salaried police force of the Island of Guernsey (s 113B(10)(k) (as so added));
- 1061 (k) the Isle of Man Constabulary (s 113B(10)(l) (as so added)); and
- 1062 (l) a body with functions in any country or territory outside the British Islands which correspond to those of a police force in any part of the United Kingdom (s 113B(10)(m) (as so added)).

Any reference to the chief officer of a police force includes the person responsible for the direction of a body so mentioned (s 113B(10) (as so added)).

For these purposes each of the following must also be treated as if it were a police force:

- 1063 (i) the Commissioners for Her Majesty's Revenue and Customs (and for this purpose a reference to the chief officer of a police force must be taken to be a reference to any one of the Commissioners) (s 113B(11)(a) (as so added));
- 1064 (ii) the Serious Organised Crime Agency (and for this purpose a reference to the chief officer of a police force must be taken to be a reference to the Director General of the Agency) (s 113B(11)(b) (as so added)); and
- 1065 (iii) such other department or body as is prescribed (and regulations may prescribe in relation to the department or body the person to whom a reference to the chief officer is to be taken to refer) (s 113B(11)(c) (as so added)).

The Police Act 1997 (Criminal Records) Regulations 2009, SI 2009/460, have been made for the purposes of the Police Act 1997 s 113B(11)(c).

The Secretary of State may require the chief officer of a police force to make available such information as he may specify for the purpose of determining, in relation to applications under s 113B, whether the police force is a relevant police force: s 119(1B) (added by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (7)). For the purposes of the Police Act 1997 s 119 references to a 'police force' include any body mentioned in s 113B(10)(a)-(i), (11), and references to a 'chief officer' are construed accordingly: s 119(6) (added by the Serious Organised Crime and Police Act 2005 s 165). No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

3 See *R (on the application of X) v Chief Constable of the West Midlands Police* [2004] EWCA Civ 1068, [2005] 1 All ER 610, [2005] 1 WLR 65, in which it was held that:

- 1066 (1) information should be disclosed under these provisions even if it only might be true;
- 1067 (2) a chief constable is not required to give an opportunity for a person to make representations prior to his performing his statutory duty of disclosure;
- 1068 (3) making available, in accordance with the law, information which a responsible employer would want to know before making a decision as to whether to employ a person as a social worker is not contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8(2) (right to respect for

private and family life, home and correspondence: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq); and

- 1069 (4) these provisions properly confer the responsibility of forming an opinion on the chief constable and, if he has properly formed the opinion that certain information might be relevant, it is not for the courts to interfere.

See also *R (on the application of L) v Metropolitan Police Comr* [2007] EWCA Civ 168, [2007] 4 All ER 128, [2008] 1 WLR 681 (non-criminal matters may be disclosed under these provisions if relevant to the applicant's suitability for a position caring or supervising children); *R (on the application of Pinnington) v Chief Constable of Thames Valley Police* [2008] EWHC 1870 (Admin), [2008] All ER (D) 405 (Jul) (in circumstances where the information disclosed by the police under an enhanced criminal record certificate is in dispute the question for the court is to decide whether the opinion formed by the police officer who had disclosed that information had been reasonably open to him).

- 4 le for the purpose described in the Police Act 1997 s 113B(2): see PARA 716.

5 Police Act 1997 s 113B(4)(a), (5)(a) (as added: see note 2). The chief officer of police must comply with the request as soon as possible: s 119(2) (amended by the Serious Organised Crime and Police Act 2005 Sch 14 para 4(b)). The Secretary of State must pay to the appropriate police authority such fee as he thinks appropriate for information provided in accordance with this requirement: Police Act 1997 s 119(3) (amended by the Greater London Authority Act 1999 Sch 27 para 112, Sch 34 Pt VII; the Criminal Justice and Police Act 2001 s 134(2); and the Serious Organised Crime and Police Act 2005 s 165(1)). For the purposes of the Police Act 1997 s 119 references to a 'police force' include any body mentioned in s 113B(10)(a)-(i), (11), and references to a 'chief officer' are construed accordingly; and in the case of such a body the reference in s 119(3) to the 'appropriate police authority' must be construed as a reference to such body as is prescribed: s 119(6), (7) (added by the Serious Organised Crime and Police Act 2005 s 165). As to the delegation of the Secretary of State's functions see PARA 712 note 2. No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

- 6 Police Act 1997 s 113B(4)(b) (as added: see note 2).

- 7 Police Act 1997 s 113B(5)(b), (c) (as added: see note 2). As to 'registered persons' see PARAS 721-727.

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(ii) Obtaining Certificates

A. APPLICATION AND ISSUE

716. Applying for certificates.

Until a day to be appointed¹ an application for a criminal record certificate², an enhanced criminal record certificate³ or, as from a day to be appointed⁴, a criminal conviction certificate⁵ must be made in the manner and form prescribed by regulations⁶; as from that day such applications must be made in a form and manner determined by the Secretary of State⁷. Evidence of identity is also required⁸.

An application for a criminal record certificate or an enhanced criminal record certificate, other than one made in relation to Crown employment or a judicial appointment⁹, must be accompanied by a statement by the registered person¹⁰. In the case of an application for a criminal record certificate the statement must be to the effect that the certificate¹¹ is required for the purposes of a question about spent convictions or cautions (an 'exempted question')¹². In the case of an application for an enhanced criminal record certificate the statement must be to the effect that the certificate is required for the purposes¹³ of an exempted question asked for a prescribed purpose¹⁴. In either case the application must be countersigned by a registered person¹⁵ unless it is transmitted electronically¹⁶.

An application for a criminal record certificate relating to a person's suitability for an appointment by or under the Crown must be accompanied by a statement by a Minister of the Crown that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant's suitability for an appointment by or under the Crown¹⁷, and an application for an enhanced criminal record certificate in relation to such an appointment or to a proposed judicial appointment must be accompanied by a statement by a Minister of the Crown, or a person nominated by a Minister of the Crown, that the certificate is required for the purposes of an exempted question asked in the course of considering the applicant's suitability for a judicial appointment or an appointment by or under the Crown to a position of such description as may be prescribed¹⁸.

The Secretary of State may, in appropriate circumstances, treat an application for a criminal record certificate as an application for an enhanced criminal record certificate and vice versa¹⁹.

¹ See note 6.

² As to the meaning of 'criminal record certificate' see PARA 712.

³ As to the meaning of 'enhanced criminal record certificate' see PARA 713.

⁴ At the date at which this volume states the law no day had been appointed for the commencement of the Police Act 1997 s 112 (see note 6) in relation to England and Wales.

⁵ As to the meaning of 'criminal conviction certificate' see PARA 711.

⁶ Police Act 1997 ss 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a), 116(1)(a) (s 112 not yet in force; amended by the Criminal Justice Act 2003 Sch 35 paras 1, 2; Police Act 1997 ss 113A, 113B added by the Serious Organised Crime and Police Act 2005 s 163(2); Police Act 1997 ss 112(1)(a), 113A(1)(a), 113B(1)(a) prospectively amended, s 125B prospectively added, by the Policing and Crime Act 2009 s 97(1), (2), Sch 8 Pt

8). At the date at which this volume states the law no day had been appointed for the purposes of the amendments made by the Policing and Crime Act 2009.

For the prescribed form for applications for criminal record certificates and enhanced criminal record certificates see the Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 3, Sch 2 (amended by SI 2003/137) and the Police Act 1997 (Criminal Records) (Welsh Language) Regulations 2003, SI 2003/117, reg 2, Schedule. Prior to submitting an application for a criminal record certificate or an enhanced criminal record certificate to the Secretary of State, a registered person must use all reasonable endeavours to ensure that the mandatory data fields are completed to the Secretary of State's satisfaction on the prescribed form and that the data supplied is accurate: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(e)(i). As to the delegation of the Secretary of State's functions see PARA 712 note 2.

Any person who holds records of convictions or cautions for the use of police forces generally must make those records available to the Secretary of State for the purpose of enabling him to carry out a relevant function: Police Act 1997 s 119(1) (amended by the Criminal Justice and Police Act 2001 s 134; and the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14).

For these purposes 'relevant function' is a function of the Secretary of State: (1) in relation to any application for a certificate or for registration; (2) in relation to the determination of whether a person should continue to be a registered person; (3) under the Safeguarding Vulnerable Groups Act 2006 s 24 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 697) in relation to monitoring a person in relation to a regulated activity (within the meaning of the Safeguarding Vulnerable Groups Act 2006); (4) under Sch 3 para 1, para 2, para 7 or 8 (considering whether criteria prescribed for the purpose of that paragraph apply to an individual): Police Act 1997 s 119(8) (added by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (7)(d))

For the purposes of the Police Act 1997 s 119 references to a 'police force' include any body mentioned in s 113B(10)(a)-(i), (11) (see PARA 715), and references to a 'chief officer' are construed accordingly: s 119(6) (added by the Serious Organised Crime and Police Act 2005 s 165). No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

At the date at which this volume states the law no form had been prescribed for applications for criminal conviction certificates.

7 Police Act 1997 s 125B(1) (prospectively added: see note 6), which provides that the Secretary of State may determine the form, manner and contents of an application for the purposes of any provision of this Pt V (ss 112-127). Such a determination may, in particular, impose requirements about the form or manner in which an electronic application is to be signed or countersigned: s 125B(2) (as so prospectively added).

8 See PARA 720.

9 In connection with application made in relation to Crown employment or a judicial appointment see the text and notes 17-18.

10 Police Act 1997 ss 113A(2)(b), 113B(2)(b) (as added (see note 6); Police Act 1997 s 113B(2)(b) amended by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (3)). As to the 'registered person' see PARAS 721-727. As to fees see PARA 717 note 6.

Prior to making a statement under the Police Act 1997 s 113A(2)(b) or s 113B(2)(b) in relation to an application for a criminal record certificate or an enhanced criminal record certificate, a registered person or his authorised agent must verify the identity of the applicant and in so doing comply with such conditions as the Secretary of State thinks fit and has notified to the registered person in writing: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(f). Where a registered person uses the services of another person to verify the identity of applicants, the registered person must ensure the suitability of that person to conduct such checks, provide appropriate training and guidance to that person; and ensure that that person discharges his duties in accordance with such conditions as the Secretary of State thinks fit under reg 7(f): reg 7(g).

Where a registered person has made a statement under the Police Act 1997 s 113A(2)(b) or s 113B(2)(b) in relation to an application for a criminal record certificate or an enhanced criminal record certificate any charges levied in connection with the services it provides under Pt 5 (ss 112-127) must be:

1070 (1) notified in writing to the Secretary of State who may publish details of any such charges in such manner as he thinks fit (Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(d)(i)); and

1071 (2) set out in any documentation the registered person publishes which relates to the services it provides under the Police Act 1997 Pt 5 (Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(d)(ii)).

11 As to the meaning of 'certificate' see PARA 711 note 1.

12 Police Act 1997 s 113A(2)(b) (as added: see note 6). By virtue of ss 113A(6), 113B(9) (as so added; Police Act 1997 s 113A(6) amended by the Criminal Justice and Immigration Act 2008 s 50(1), (3)), 'exempted question' means a question which:

1072 (1) so far as it applies to convictions, is a question in relation to which the Rehabilitation of Offenders Act 1974 s 4(2)(a) or (b) (effect of rehabilitation: see PARA 664) has been excluded by an order of the Secretary of State under s 4(4) (see PARA 687); and

1073 (2) so far as it applies to cautions, is a question to which Sch 2 para 3(3) or (4) (see PARAS 664, 665) has been excluded by an order of the Secretary of State under Sch 2 para 4 (see PARA 687).

Prior to submitting an application for a criminal record certificate or an enhanced criminal record certificate to the Secretary of State, a registered person must use all reasonable endeavours to ensure that the certificate is requested for an exempted question or, as the case may be, a prescribed purpose: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(e)(ii).

13 As to the purposes for which enhanced criminal record certificates may be required see PARA 714. See note 10.

14 Police Act 1997 s 113B(2)(b) (as added amended: see note 6).

15 Police Act 1997 ss 113A(2)(a), 113B(2)(a) (as added: see note 6).

16 See the Police Act 1997 ss 113A(2A), 113B(2A) (as added (see note 6); further added by SI 2009/203), which provide that an application for a criminal record certificate or an enhanced criminal record certificate need not be countersigned by a registered person if it is transmitted to the Secretary of State electronically by a registered person who satisfies conditions determined by the Secretary of State and is transmitted in accordance with requirements determined by the Secretary of State. Any electronic system used by the registered person for the purposes of countersigning applications under the Police Act 1997 s 113A or s 113B must comply with such specifications as the Secretary of State may notify in writing to the registered body: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(k). As to the registered body see PARA 721 et seq.

17 Police Act 1997 s 114(2). The provisions of s 113A(3)-(6) (see PARAS 712, 717) apply in relation to s 114 with any necessary modifications: s 114(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 14 paras 1, 2; amended by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (5)).

18 Police Act 1997 s 116(2) (amended by the Criminal Justice Act 2003 Sch 35 paras 1, 5). Sections 113B(3)-(11) (see PARAS 712-713, 715) and ss 113BA-113BC (see PARA 713) apply in relation to s 116 with any necessary modifications: s 116(3) (amended by the Serious Organised Crime and Police Act 2005 Sch 14 paras 1, 3; amended by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14(1), (6)).

19 See the Police Act 1997 ss 113A(5), 113B(7), (8) (as added: see note 6), which provide that the Secretary of State may treat an application for a criminal record certificate as an application for an enhanced criminal record certificate as an application for a criminal record certificate if:

1074 (1) in his opinion the certificate is required for a prescribed purpose (see PARA 714);

1075 (2) the registered person provides him with the statement required by s 113B(2) (see the text and notes 10-15); and

1076 (3) the applicant consents and pays to the Secretary of State the amount (if any) by which the fee payable in relation to an application for an enhanced criminal record certificate exceeds the fee paid in relation to the application for a criminal record certificate,

and that the Secretary of State may treat an application for an enhanced criminal record certificate as an application for a criminal record certificate if in his opinion the certificate is not required for a prescribed purpose (in which event the Secretary of State must refund to the applicant the amount (if any) by which the fee paid exceeds the fee payable for a criminal record certificate).

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717. Duty of Secretary of State to issue certificates.

The Secretary of State must issue a criminal record certificate¹ or an enhanced criminal record certificate², including a criminal record certificate relating to Crown employment and an enhanced criminal record certificate relating to Crown employment or a judicial appointment, and as from a day to be appointed³ must issue a criminal conviction certificate⁴, to any individual who makes an application⁵ and pays the prescribed fee⁶.

1 As to the meaning of 'criminal record certificate' see PARA 712. As to the delegation of the Secretary of State's functions see PARA 712 note 2.

2 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

3 At the date at which this volume states the law no day had been appointed for the commencement of the Police Act 1997 s 112 (see the text and notes 1-6) in relation to England and Wales.

4 As to the meaning of 'criminal conviction certificate' see PARA 711.

5 Police Act 1997 ss 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a), 116(1)(a) (s 112 not yet in force; amended by the Criminal Justice Act 2003 Sch 35 paras 1, 2; Police Act 1997 ss 113A, 113B added by the Serious Organised Crime and Police Act 2005 s 163(2); Police Act 1997 ss 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a), 116(1)(a) prospectively amended, s 125B prospectively added, by the Policing and Crime Act 2009 s 97, Sch 8 Pt 8). At the date at which this volume states the law no day had been appointed for the purposes of the amendments made by the Policing and Crime Act 2009. Until a day to be appointed applications must be made in the manner and form prescribed by regulations (Police Act 1997 ss 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a), 116(1)(a) (as so amended and prospectively amended)); as from that day such applications must be made in a form and manner determined by the Secretary of State (s 125B(1) (as so prospectively added)), which provides that the Secretary of State may determine the form, manner and contents of an application for the purposes of any provision of this Pt V (ss 112-127)). Such a determination may, in particular, impose requirements about the form or manner in which an electronic application is to be signed or countersigned: s 125B(2) (as so prospectively added). Evidence of identity is required: see PARA 720.

Where an applicant has received a criminal conviction certificate, the Secretary of State may refuse to issue another certificate to that applicant during such period as may be prescribed: Police Act 1997 s 112(4) (not yet in force). At the date at which this volume states the law no period had been prescribed for these purposes.

6 Police Act 1997 ss 112(1)(b) (not yet in force), 113A(1)(b), 113B(1)(b), 114(1)(b), 116(1)(b) (ss 113A, 113B as added: see note 5). Fees are payable under regulations made by the Secretary of State: Police Act 1997 s 112(1)(b) (not yet in force), 113A(1)(b), 113B(1)(b), 114(1)(b), 116(1)(b) (ss 113A, 113B as so added). A fee of £26 is payable in respect of a criminal record certificate and a fee of £36 is payable in respect of an enhanced criminal record certificate (see the Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 4(a), (b) (substituted by SI 2003/1418; SI 2006/748; amended by SI 2009/2428)), although no fee is payable in relation to an application made by a volunteer (Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 4 (as so substituted)). The fee payable in relation to an application under the Police Act 1997 s 113A or s 113B which is accompanied by a statement under s 113A(2)(b) or 113B(2)(b) (see PARA 716) must be invoiced by the Secretary of State and is payable on account within 15 days of the invoice date: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(c).

At the date at which this volume states the law no fee had been prescribed in respect of criminal record certificates.

'Volunteer' means a person engaged in an activity which involves spending time, unpaid (except for travel and other approved out-of-pocket expenses), doing something which aims to benefit some third party other than or in addition to a close relative: Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 2. If an application is made by a volunteer the registered person must, prior to submitting the application, use all reasonable endeavours to ensure that the applicant falls within this definition: Police Act 1997 (Criminal

Records) (Registration) Regulations 2006, SI 2006/750, reg 7(e)(iii). As to the 'registered person' see PARAS 721-727.

As from a day to be appointed if an application for a criminal conviction certificate states that the certificate is required in connection with employment by, or voluntary work for, a person specified in the application, the Secretary of State must send a copy of the certificate to that person: Police Act 1997 s 112(2A) (prospectively added by the Policing and Crime Act 2009 s 93). At the date at which this volume states the law no day had been appointed for the coming into force of this provision.

Anything authorised or required by any provision of the Police Act 1997 Pt V (ss 112-127) to be prescribed must be prescribed by regulations made by the Secretary of State: s 125(1).

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718. Duty of Secretary of State to issue copies.

The Secretary of State must send a copy of a criminal record certificate¹ or an enhanced criminal record certificate² and (in relation to an enhanced criminal record certificate) a copy of any additional information accompanying the certificate³ to whoever acted as the registered person in relation to the application⁴.

1 As to the meaning of 'criminal record certificate' see PARA 712. As to the delegation of the Secretary of State's functions see PARA 712 note 2.

2 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

3 Ie any information provided under the Police Act 1997 s 113B(5): see PARA 715.

4 Police Act 1997 ss 113A(4), 113B(6) (added by the Serious Organised Crime and Police Act 2005 s 163(2); amended by SI 2009/203).

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719. Correction of inaccuracies.

Where an applicant¹ for a criminal record certificate², an enhanced criminal record certificate³ or (as from a day to be appointed⁴) a criminal conviction certificate⁵ believes that the information contained in the certificate⁶ is inaccurate, he may make an application in writing to the Secretary of State for a new certificate⁷. The Secretary of State must consider any such application; and where he is of the opinion that the information in the certificate is inaccurate, he must issue a new certificate⁸.

1 le under the Police Act 1997 ss 112-116: see PARA 716 et seq.

2 As to the meaning of 'criminal record certificate' see PARA 712.

3 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

4 At the date at which this volume states the law no day had been appointed for the commencement of the Police Act 1997 s 112 (see PARA 711) in relation to England and Wales.

5 As to the meaning of 'criminal conviction certificate' see PARA 711.

6 As to the meaning of 'certificate' see PARA 711 note 1.

7 Police Act 1997 s 117(1). Evidence of identity is required: see PARA 720. As to the delegation of the Secretary of State's functions see PARA 712 note 2.

8 Police Act 1997 s 117(2).

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720. Evidence of identity.

The Secretary of State may refuse to issue a criminal conviction certificate¹, a criminal record certificate² or an enhanced criminal record certificate³, or consider an application for a replacement certificate in the event of an inaccuracy⁴, unless the application is supported by such evidence of identity as he may require⁵. In particular, he may refuse to issue a certificate or consider an application for a replacement unless the applicant has his fingerprints taken at the prescribed place and in the prescribed manner⁶ and pays the prescribed fee to such person as may be prescribed⁷; and as from a day to be appointed the Secretary of State may⁸, in particular, refuse to issue a certificate to a person unless the application is supported by prescribed evidence that the person's identity has been verified by a third person determined by the Secretary of State⁹.

1 As to the meaning of 'criminal conviction certificate' see PARA 711.

2 As to the meaning of 'criminal record certificate' see PARA 712.

3 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

4 ie under the Police Act 1997 s 117: see PARA 719.

5 Police Act 1997 s 118(1). For the purpose of verifying evidence of identity supplied in pursuance of these provisions the Secretary of State may obtain such information as he thinks is appropriate from data held by the United Kingdom Passport Agency, the Driver and Vehicle Licensing Agency, Driver and Vehicle Licensing Northern Ireland, the Secretary of State in connection with keeping records of national insurance numbers or such other persons or for such purposes as is prescribed: s 118(2A) (added by the Serious Organised Crime and Police Act 2005 s 164(1), (3)). At the date at which this volume states the law no additional persons or purposes had been prescribed.

6 Police Act 1997 s 118(2)(a), (3).

Where the Secretary of State requires an application to be supported by evidence of identity in the form of fingerprints he must notify the applicant of his requirement and of the fact that any fingerprints taken from the applicant and provided to the Secretary of State in pursuance of the requirement may be the subject of a speculative search within the meaning of the Police and Criminal Evidence Act 1984 Pt V (ss 53-65) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 1006-1009): Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 11(1), (9). An applicant in receipt of such notification must notify the Secretary of State of whether he wishes to proceed with his application and, if so, must notify the Secretary of State that he consents to the taking of his fingerprints and either that he proposes to attend at a police station (the 'specified police station') for the purpose of having his fingerprints taken or that he proposes to have his fingerprints taken by the registered person countersigning or acting as the registered person in relation to his application (although a person can only have his fingerprints taken by the registered person with the consent of the Secretary of State): reg 11(2), (2A) (reg 11(2) amended, reg 11(2A) added, by SI 2009/460). As to the 'registered person' see PARAS 721-727. The Secretary of State may require the police officer in charge of the specified police station, or any other police station he reasonably determines, to take the applicant's fingerprints at the specified station at such reasonable time as the officer may direct and notify to the applicant: Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 11(3).

Fingerprints taken pursuant to these provisions must be destroyed as soon as is practicable after the identity of the applicant is established to the satisfaction of the Secretary of State, and where fingerprints are destroyed any copies of the fingerprints must also be destroyed and any chief officer of police controlling access to computer data relating to the fingerprints must make access to the data impossible as soon as it is practicable to do so: reg 11(4), (5). Any applicant who asks to be allowed to witness the destruction of his fingerprints or copies of them has a right to witness it: reg 11(6). If access to computer data relating to fingerprints is not destroyed and the applicant to whose fingerprints the data relates asks for a certificate that it has been complied with, such a certificate must be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by the responsible chief officer of police (ie the chief officer of

police in whose area the computer data were put on to the computer) or a person authorised by him or on his behalf for these purposes: reg 11(7), (9).

In the case of an applicant under the age of 18 years the consent of the applicant's parent or guardian to the taking of the applicant's fingerprints is also required: reg 11(8).

Any person who holds records of fingerprints for the use of police forces generally must make those records available to the Secretary of State for the purpose of enabling him to carry out his functions in relation to any application for a certificate or for registration or the determination of whether a person should continue to be a registered person: Police Act 1997 s 119(4) (amended by the Criminal Justice and Police Act 2001 s 134). For these purposes references to a 'police force' include any body mentioned in the Police Act 1997 s 113B(10)(a)-(i), (11) (see PARA 715), and references to a 'chief officer' are construed accordingly: s 119(6) (added by the Serious Organised Crime and Police Act 2005 s 165). No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

7 Police Act 1997 s 118(2)(b). At the date at which this volume states the law no fee had been prescribed.

Any person who holds records of fingerprints for the use of police forces generally must make those records available to the Secretary of State for the purpose of enabling him to carry out his functions in relation to any application for a certificate: Police Act 1997 s 119(4)(a) (amended by the Criminal Justice and Police Act 2001 s 134). For these purposes references to a 'police force' include any body mentioned in the Police Act 1997 s 113B(10)(a)-(i), (11) (see PARA 715), and references to a 'chief officer' are construed accordingly: s 119(6) (added by the Serious Organised Crime and Police Act 2005 s 165). No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

8 le by virtue of the Police Act 1997 s 118(1) (see the text and notes 1-5).

9 Police Act 1997 s 118(2ZA) (prospectively added by the Policing and Crime Act 2009 s 95). At the date at which this volume states the law no day had been appointed for the coming into force of this provision. This provision applies whether or not the third person charges a fee for the verification: Police Act 1997 s 118(2ZA) (as so prospectively added).

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B. REGISTRATION OF COUNTERSIGNATORIES

721. Acting as countersignatory.

A person acts as the 'registered person'¹ in relation to an application for a criminal record certificate² or an enhanced criminal record certificate³ if he countersigns the application⁴ or transmits it⁵ to the Secretary of State⁶.

1 For the purposes of the Police Act 1997 Pt V (ss 112-127) a 'registered person' is a person who is listed in a register to be maintained by the Secretary of State for the purposes of Pt V: see s 120(1); and PARAS 722-727.

2 As to the meaning of 'criminal record certificate' see PARA 712.

3 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

4 Ie in accordance with the Police Act 1997 s 113A(2) or, as the case may be, s 113B(2): see PARA 716.

5 Ie in accordance with the Police Act 1997 s 113A(2A) or, as the case may be, s 113B(2A): see PARA 716.

6 Police Act 1997 ss 113A(9), 113B(12) (added by the Serious Organised Crime and Police Act 2005 s 163(2); and by SI 2009/203). As to the delegation of the Secretary of State's functions see PARA 712 note 2.

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722. Inclusion in the register of countersignatories.

The Secretary of State must¹ include in the register of countersignatories² any person who:

- 2422 (1) applies to him in writing to be registered³;
- 2423 (2) is either:
- .28
- 41. (a) a body corporate or unincorporate⁴;
- 42. (b) a person appointed to an office by virtue of any enactment⁵; or
- 43. (c) an individual who employs others in the course of a business⁶; and
- .29
- 2424 (3) has not in the period of two years ending with the date of the application been removed⁷ from the register⁸.

A body applying for registration must satisfy the Secretary of State that it is likely to ask exempted questions⁹ or is likely to act as the registered person¹⁰ in relation to applications¹¹ for criminal record certificates¹² or enhanced criminal record certificates¹³ at the request of bodies or individuals asking exempted questions¹⁴. A person other than a body applying for registration must satisfy the Secretary of State that he is likely to ask exempted questions¹⁵. Evidence of identity may also be required¹⁶.

A person's registration in the register of countersignatories is conditional upon:

- 2425 (i) payment of the requisite fees and notification of specified charges¹⁷;
- 2426 (ii) the registered person using all reasonable endeavours to ensure that the application is in order¹⁸;
- 2427 (iii) the applicant's identity being properly verified¹⁹;
- 2428 (iv) compliance with the code of practice²⁰;
- 2429 (v) the provision of any information relating to his eligibility and suitability²¹;
- 2430 (vi) the notification of any change to the details in the information recorded on the register²²;
- 2431 (vii) the number of applications dealt with by a registered person not being fewer than 100 in any 12 month period²³; and
- 2432 (viii) compliance with the requirements concerning powers of entry and inspection²⁴,

and the Secretary of State may remove from the register any registered person who fails to comply with these conditions²⁵.

1 le subject to regulations under the Police Act 1997 s 120ZA (further provision about registration: see below) and under s 120AA (refusal, cancellation and suspension of registration: see PARA 726) and to s 120A (refusal and cancellation of registration: see PARA 725): s 120(2) (substituted by the Criminal Justice Act 2003 Sch 35 paras 1, 6; amended by the Criminal Justice and Police Act 2001 s 134(3)). Regulations under the Police Act 1997 s 120ZA may in particular make provision for:

1077 (1) the payment of fees (s 120ZA(1), (2)(a) (s 120ZA added by the Criminal Justice Act 2003 Sch 35 para 7));

1078 (2) the information to be included in the register (Police Act 1997 s 120ZA(2)(b) (as so added));

1079 (3) the registration of any person to be subject to conditions (s 120ZA(2)(c) (as so added)): provision which may be made by virtue of this head includes provision for the registration or continued registration of any person to be subject to prescribed conditions or, if the regulations so provide, such conditions as the Secretary of State thinks fit (s 120ZA(3)(a) (as so added)) and for the Secretary of State to vary or revoke those conditions (s 120ZA(3)(b) (as so added)), and the conditions so imposed may in particular include conditions requiring a registered person, before he countersigns an application at an individual's request, to verify the identity of that individual in the prescribed manner (s 120ZA(4)(a) (as so added)), conditions requiring an application under s 113A or s 113B to be transmitted by electronic means to the Secretary of State by the person who acts as the registered person in relation to the application (s 120ZA(4)(b) (as so added; amended by the Serious Organised Crime and Police Act 2005 Sch 14 para 7; and by SI 2009/203)), and conditions requiring a registered person to comply with any code of practice for the time being in force under the Police Act 1997 s 122 (see PARA 728) (s 120ZA(4)(c) (as so added));

1080 (4) the nomination by a body corporate or unincorporate (s 120ZA(2)(d)(i) (as so added)), or a person appointed to an office by virtue of any enactment (s 120ZA(2)(d)(ii) (as so added)), of the individuals authorised to act for it or, as the case may be, him in relation to the countersigning of applications under Pt V (ss 112-127) or the transmitting of applications under s 113A(2A) or s 113B(2A) (s 120ZA(2)(d) (as so added)); and

1081 (5) the refusal by the Secretary of State, on such grounds as may be specified in or determined under the regulations, to accept or to continue to accept the nomination of a person as so authorised (s 120ZA(2)(e) (as so added)).

As to the delegation of the Secretary of State's functions see PARA 712 note 2.

2 le the register maintained by the Secretary of State for the purposes of the Police Act 1997 Pt V: see s 120(1); and PARA 712 note 7.

3 Police Act 1997 s 120(2)(a) (as substituted: see note 1). The fee payable by a person on application for inclusion in the register is £300: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 5.

Any person who holds records of convictions or cautions for the use of police forces generally must make those records available to the Secretary of State for the purpose of enabling him to carry out his functions in relation to any application for registration or the determination of whether a person should continue to be a registered person: Police Act 1997 s 119(1) (amended by the Criminal Justice and Police Act 2001 s 134; further amended (adding functions relating to the operation of the Safeguarding Vulnerable Groups Act 2006) by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 14). For the purposes of the Police Act 1997 s 119 references to a 'police force' include any body mentioned in s 113B(10)(a)-(i), (11) (see PARA 715), and references to a 'chief officer' are construed accordingly: s 119(6) (added by the Serious Organised Crime and Police Act 2005 s 165). No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

4 Police Act 1997 s 120(2)(b), (4)(a) (as substituted: see note 1).

5 Police Act 1997 s 120(4)(b) (as substituted: see note 1).

6 Police Act 1997 s 120(4)(c) (as substituted: see note 1).

7 le removed under the Police Act 1997 s 120A (see PARA 725) or s 120AA (see PARA 726).

8 Police Act 1997 s 120(2)(c) (as substituted: see note 1).

9 As to the meaning of 'exempted question' see the Police Act 1997 s 113A; and PARA 716.

10 As to the meaning of 'act as the registered person' see PARA 721.

11 le applications under the Police Act 1997 s 113A or s 113B: see PARA 716.

12 As to the meaning of 'criminal record certificate' see PARA 712.

13 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

14 Police Act 1997 s 120(5), (7) (as substituted (see note 1); amended by the Serious Organised Crime and Police Act 2005 Sch 14 paras 1, 6; and by SI 2009/203).

15 Police Act 1997 s 120(6) (as substituted: see note 1).

16 The Secretary of State may refuse to consider an application under these provisions unless the application is supported by such evidence of identity as he may require: Police Act 1997 s 118(1) (amended by the Serious Organised Crime and Police Act 2001 s 164(1), (2)). In particular, he may refuse to issue a certificate or consider an application for a replacement unless the applicant has his fingerprints at the prescribed place and in the prescribed manner (Police Act 1997 s 118(2)(a), (3) and pays the prescribed fee to such person as may be prescribed (s 118(2)(b))). At the date at which this volume states the law no fee had been prescribed. As to the verification of evidence of identity supplied in pursuance of these provisions see PARA 720 note 5. As to the taking of fingerprints see PARA 720 note 6.

17 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(a)-(d), (m). The requisite fees are those payable under reg 5 (see note 3), reg 6 (see PARA 724), the fees and charges payable and notifiable in relation to an application under the Police Act 1997 s 113A or s 113B which is accompanied by a statement under s 113A(2)(b) or s 113B(2)(b) (see PARA 716), and any payments incurred for any applications knowingly submitted after the Secretary of State removing or suspending the registered person from the register (see PARAS 725, 726): Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(a)-(d), (m).

18 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(e), (k). As to the registered person's duties in this regard see reg 7(e)(i)-(iii); and PARAS 716 notes 5, 10, 717 note 6.

19 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(f), (g). As to the registered person's duties in this regard see reg 7(f), (g); and PARAS 716 note 8.

20 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(h). As to the code of practice see the Police Act 1997 s 122; and PARA 728.

21 See the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(i); and PARA 725.

22 See the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(j); and PARA 724.

23 See the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(l) (amended by SI 2009/203); and PARA 726.

24 See the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 8(1); and PARA 727.

25 Police Act 1997 s 120AA(2)(c), (3)(b) (s 120AA added by the Criminal Justice Act 2003 Sch 35 paras 1, 9); Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 9. The Secretary of State may also suspend such a person's registration for such period not exceeding six months as the Secretary of State thinks fit: Police Act 1997 s 120AA(3)(a) (as so added). The powers of suspension and removal are subject to s 120AB: see PARA 726.

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723. Nomination of authorised individuals.

A body or statutory office-holder¹ applying for registration in the register of countersignatories² must submit with the application the names of the individuals authorised to act for the body or statutory office-holder in relation to the countersigning or transmission of such applications³, and a registered body or person⁴ who is a statutory office-holder must submit to the Secretary of State the names of any individuals so authorised after the registration of the body or the statutory office-holder, whether or not in substitution for any name previously submitted⁵. The Secretary of State may refuse to accept, or to continue to accept, the nomination of an individual as so authorised if in his opinion that individual is not a suitable person to have access to information⁶ which has become, or is likely to become, available to him as a result of the registration of the body or the statutory office-holder which nominated him⁷, or if the maximum number of names for that registered body or statutory office-holder are already registered⁸.

¹ 'Statutory office-holder' means a person appointed to an office by virtue of any enactment: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 2.

² The registration under the Police Act 1997 s 120 (see PARA 722): Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4(1). As to acting as countersignatory see PARA 721.

³ Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4(1). As to the countersigning and transmission of applications see the Police Act 1997 ss 113A, 113B; and PARA 716.

⁴ As to the registration of bodies for these purposes see PARA 723. As to the meaning of 'registered person' see PARA 721 note 1.

⁵ Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4(2). As to the delegation of the Secretary of State's functions see PARA 712 note 2.

⁶ In determining for these purposes whether an individual is a suitable person to have access to any information the Secretary of State may have regard, in particular, to the matters specified in the Police Act 1997 s 120A(3) (see PARA 725): Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4(4).

⁷ Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4(3). Where the Secretary of State refuses to accept, or to continue to accept, the nomination of an individual under these provisions he must notify the body or the statutory office-holder concerned, and that body or statutory office-holder may submit the name of another individual in substitution: reg 4(5).

⁸ Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 10(1) (amended by SI 2009/203). For this purpose the maximum number of names for a registered body or statutory office-holder is that specified administratively by the Secretary of State: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 10(2). Where more than the maximum number of names have been registered, the Secretary of State may remove from the register such number of names as is necessary to bring the registered body's or statutory office-holder's number of registered names to the maximum number permitted: reg 10(3).

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724. Information to be included in the register.

The register of countersignatories¹ must include the following information:

- 2433 (1) the name and address of each registered person² and any telephone or facsimile number or electronic mailing address which has been notified to the Secretary of State for communication purposes³;
- 2434 (2) the date on which the name of that person was first listed in the register⁴;
- 2435 (3) the number assigned to that person on being so listed⁵;
- 2436 (4) the nature of the exempted questions⁶, if any, that that person is likely to ask⁷;
- 2437 (5) in the case of a registered body⁸:
 - .30
 - 44. (a) whether that body is likely to countersign applications⁹ at the request of bodies or individuals asking exempted questions and, if so, the nature of those questions¹⁰;
 - 45. (b) the name and address of any individual for the time being nominated to act for a registered body in relation to the countersigning of applications under these provisions¹¹ and any telephone or facsimile number or electronic mailing address which has been notified to the Secretary of State for communication purposes¹²;
 - 46. (c) the date on which the name of that individual was first listed in the register¹³;
 - 47. (d) the number assigned to that individual on being so listed¹⁴; and
 - 48. (e) a specimen of the signature of that individual¹⁵;
 - .31
 - 2438 (6) in the case of each registered person who is a statutory office holder¹⁶:
 - .32
 - 49. (a) the name and address of any individual for the time being nominated¹⁷ as being authorised to act for the statutory office holder in relation to the countersigning of applications¹⁸ and any telephone or facsimile number or electronic mailing address which has been notified to the Secretary of State for communications purposes¹⁹;
 - 50. (b) the date on which the name of that individual was first listed on the register²⁰;
 - 51. (c) the number assigned to that individual on being listed²¹; and
 - 52. (d) a specimen of the signature of that individual²²; and
 - .33
 - 2439 (7) in respect of each registered person other than a body, a specimen of any signature which will be used by that person for the purposes of countersigning²³ applications²⁴.

Any change to the details in the information recorded on the register must be notified to the Secretary of State²⁵.

¹ ie the register maintained by the Secretary of State for the purposes of the Police Act 1997 Pt 5 (ss 112-127) (see PARA 721 et seq): Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg

2. As to acting as countersignatory see PARA 721; and as to inclusion in the register of countersignatories see PARA 722.
- 2 As to the meaning of 'registered person' see PARA 721 note 1.
- 3 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(a). As to the delegation of the Secretary of State's functions see PARA 712 note 2.
- 4 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(b).
- 5 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(c).
- 6 'Exempted question' means a question in relation to which the Rehabilitation of Offenders Act 1974 s 4(2) (a) or (b) (effect of rehabilitation: see PARA 664) has been excluded by an order of the Secretary of State under s 4(4) (see PARA 687); Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 2. Cf also the meaning of 'exempted question' in the Police Act 1997 Pt V: see s 113A; and PARA 716.
- 7 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(d).
- 8 As to the registration of bodies for these purposes see PARA 723.
- 9 le under the Police Act 1997 s 113A (see PARA 716) or s 113B (see PARA 716).
- 10 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(e)(i) (amended by SI 2009/203).
- 11 le under the Police Act 1997 Pt V: see PARA 716 et seq.
- 12 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(e)(ii). There is payable by a registered person which is a body a fee of £5 in respect of the second and each subsequent name entered in the register in accordance with reg 3(1)(e)(ii): reg 6(1). The fee payable under reg 6(1) or 6(2) in respect of the second and each subsequent name entered in the register must be invoiced by the Secretary of State to the person and payable on account within 15 days of the invoice date: reg 7(b).
- 13 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(e)(iii).
- 14 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(e)(iv).
- 15 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(e)(v).
- 16 As to the meaning of 'statutory office-holder' see PARA 723 note 1.
- 17 le in accordance with the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4: see PARA 723.
- 18 See note 11.
- 19 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(f)(i) (amended by SI 2009/203). There is payable by a registered person which is a statutory office-holder a fee of £5 in respect of the second and each subsequent name entered in the register in accordance with the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(f)(i): reg 6(2). See note 12.
- 20 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(f)(ii).
- 21 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(f)(iii).
- 22 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(f)(iv).
- 23 See note 9.
- 24 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 3(1)(g).
- 25 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(j).

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725. Refusal and cancellation of registration of unsuitable persons.

A person's registration in the register of countersignatories¹ is conditional upon the provision of information reasonably required in order to consider the continuing eligibility and suitability of registered persons and the eligibility and suitability of applicants for registered person status². The Secretary of State may refuse to include a person in the register if it appears to him that the registration of that person is likely to make it possible for information to become available to an individual who, in the Secretary of State's opinion, is not a suitable person to have access to that information³, and may remove a person from the register if it appears to him that the registration of that person is likely to make it possible for information to become available to an individual who, in the Secretary of State's opinion, is not a suitable person to have access to that information⁴, or that the registration of that person has resulted in information becoming known to such an individual⁵.

¹ le the register maintained for the purposes of the Police Act 1997 Pt 5 (ss 112-127) (see PARA 721 et seq). As to inclusion in the register see PARA 722.

² Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(i), (ii). Registration is also conditional upon the continuing ability of registered persons to make payments of fees on behalf of applicants under the Police Act 1997 Pt 5: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(i)(iii).

It is the duty of the chief officer of any police force to comply, as soon as practicable after receiving it, with any request by the Secretary of State to provide him with information which is available to the chief officer, relates to an applicant for registration, a registered person or an individual who is likely to have access to information in consequence of a particular application for registration, or a particular registered person, acting as the registered person in relation to applications under Pt V, and concerns a matter which the Secretary of State has notified to the chief officer to be a matter which, in his opinion, is relevant to the determination of the suitability of individuals for having access to the information that may be provided in consequence of a person acting as the registered person in relation to applications under these provisions: s 120A(4) (s 120A added by the Criminal Justice and Police Act 2001 s 34(1); Police Act 1997 s 120A(4) amended by SI 2009/203). The Secretary of State must pay to the appropriate police authority such fee as he thinks appropriate for information provided in accordance with this requirement: Police Act 1997 s 119(3) (amended by the Greater London Authority Act 1999 Sch 27 para 112, Sch 34 Pt VII; the Criminal Justice and Police Act 2001 s 134(2); and the Serious Organised Crime and Police Act 2005 s 165(1)). No proceedings lie against the Secretary of State by reason of an inaccuracy in the information made available or provided to him in accordance with these requirements: Police Act 1997 s 119(5).

For these purposes references to a 'police force' include any body mentioned in s 113B(10)(a)-(i), (11) (see PARA 715); and references to a chief officer must be construed accordingly and in the case of such a body the reference in s 119(3) to the 'appropriate police authority' must be construed as a reference to such body as is prescribed: ss 119(6), (7), 120A(6) (s 119(6), (7) added by the Serious Organised Crime and Police Act 2005 s 165; s 120A(6) as so added; further added by the Serious Organised Crime and Police Act 2005 s 165(2)). As to the meaning of 'registered person' see PARA 721 note 1; and as to 'acting as the registered person' see PARA 721.

As to the delegation of the Secretary of State's functions see PARA 712 note 2.

³ Police Act 1997 s 120A(1) (s 120A added by the Criminal Justice and Police Act 2001 s 134(1)). In determining for these purposes whether an individual is a suitable person to have access to any information, the Secretary of State may have regard, in particular, to:

1082 (1) any information relating to that person which concerns a relevant matter (within the meaning of the Police Act 1997 s 113A: see PARA 712 note 2) (s 120A(3)(a), (5) (as so added; s 120A(5) amended by the Serious Organised Crime and Police Act 2005 Sch 14 para 8));

- 1083 (2) any information provided to the Secretary of State under the Police Act 1997 s 120A(4) (see below) (s 120A(3)(c) (as so added));
- 1084 (3) until a day to be appointed, whether that person is included in any list mentioned in s 113C(3) or s 113D(3) (suitability relating to work with children and vulnerable adults: see PARA 712) (s 120A(3)(b) (as so added; amended by the Serious Organised Crime and Police Act 2005 Sch 14 para 8; Police Act 1997 s 120A(3)(b) prospectively substituted, s 120A(3A)-(3D), (7) prospectively added, by the Policing and Crime Act 2009 s 96: at the date at which this volume states the law no day had been appointed for the coming into force of these amendments)); and
- 1085 (4) as from a day to be appointed, any information relating to the person of the following kinds:
- 30. (a) whether the person is barred from regulated activity (Police Act 1997 s 120A(3A)(a) (as so prospectively added));
 - 31
 - 31. (b) if the person is barred from such activity, such details as are prescribed of the circumstances in which the person became barred (s 120A(3A)(b) (as so prospectively added));
 - 32
 - 32. (c) whether the Independent Safeguarding Authority is considering whether to include the person in a barred list in pursuance of the Safeguarding Vulnerable Groups Act 2006 Sch 3 para 3, 5, 9 or 11 (Police Act 1997 s 120A(3A)(c) (as so prospectively added));
 - 33
 - 33. (d) whether the person is subject to a direction under the Education Act 2002 s 167A (prohibition on participation in management of independent school: see **EDUCATION**) (Police Act 1997 s 120A(3A)(d) (as so prospectively added)).
 - 34

As from a day to be appointed if the Secretary of State receives an application for registration and it appears to the Secretary of State that the registration is likely to make it possible for information to become available to an individual who the Independent Safeguarding Authority is considering whether to include in a barred list as mentioned in s 120A(3A)(c) the Secretary of State may postpone consideration of the application until the Authority has decided whether to include the individual in the barred list: s 120A(3B), (3C) (as so prospectively added).

For the purposes of s 120A(3A)-(3C), as to the meaning of 'barred' see the Safeguarding Vulnerable Groups Act 2006 s 3; as to the meaning of 'regulated activity' see s 5; and as to the meaning of 'barred list' see s 60; and social services and community care (definitions applied by the Police Act 1997 s 120A(3D) (as so prospectively added)). 'Prescribed' is construed in accordance with s 125: s 120A(3D) (as so prospectively added).

The Secretary of State may by order made by statutory instrument amend s 120A(3A) for the purpose of altering the information specified therein that subsection: s 120A(7) (as so prospectively added). At the date at which this volume states the law no such order had been made.

4 Police Act 1997 s 120A(2)(a) (as added: see note 3).

5 Police Act 1997 s 120A(2)(b) (as added: see note 3). In the event of the Secretary of State removing or suspending the registered person from the register, that person must pay for any applications knowingly submitted after such removal or suspension: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(m).

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726. Refusal and suspension of unused registrations.

The number of applications¹ in relation to which a registered person has acted as a registered person² in any 12 month period must not be fewer than 100³, and the Secretary of State may remove from the register⁴ any registered person who fails to comply with this requirement⁵.

Where a registered person:

2440 (1) is, in the opinion of the Secretary of State, no longer likely to wish to act as the registered person in relation to applications⁶; or

2441 (2) has, in any period of 12 months during which he was registered, acted as the registered person in relation to fewer applications than the minimum number specified in respect of him by such regulations⁷,

the Secretary of State may suspend that person's registration for such period not exceeding six months as the Secretary of State thinks fit or remove that person from the register⁸.

¹ ie applications for inclusion in the register maintained for the purposes of the Police Act 1997 Pt 5 (ss 112-127) (see PARA 721 et seq). As to inclusion in the register see PARA 722.

² As to acting as a registered person see PARA 721; and as to the meaning of 'registered person' see PARA 721 note 1.

³ Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 7(l) (amended by SI 2009/203).

⁴ ie the register maintained for the purposes of the Police Act 1997 Pt 5 (ss 112-127) (see PARA 721 et seq). As to inclusion in the register see PARA 722.

⁵ Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 9. As to the delegation of the Secretary of State's functions see PARA 712 note 2. In the event of the Secretary of State removing or suspending the registered person from the register, that person must pay for any applications knowingly submitted after such removal or suspension: reg 7(m). These provisions are made pursuant to the Police Act 1997 s 120AA(1) (ss 120AA, 120AB added by the Criminal Justice Act 2003 Sch 35 paras 1, 9; Police Act 1997 s 120AA(1) amended by SI 2009/203), which provides that regulations may make provision enabling the Secretary of State in prescribed cases to refuse to register a person who, in the opinion of the Secretary of State, is likely to act as the registered person in relation to fewer applications in any period of 12 months than a prescribed minimum number.

⁶ Police Act 1997 s 120AA(2)(a) (as added (see note 5); amended by SI 2009/203).

⁷ Police Act 1997 s 120AA(2)(b) (as added (see note 5); amended by SI 2009/203).

⁸ Police Act 1997 s 120AA(3) (as added: see note 5).

Before cancelling or suspending a person's registration under s 120AA the Secretary of State must send him written notice of (or transmit electronically) his intention to do so: s 120AB(1), (7) (as so added). Every such notice must give the Secretary of State's reasons for proposing to cancel or suspend the registration and inform the person concerned of his right under to make representations under s 120AB(3) (which provides that a person who receives such a notice may, within 21 days of service, make representations in writing to the Secretary of State as to why the registration should not be cancelled or suspended): s 120AB(2), (3) (as so added). After considering any such representations, the Secretary of State must give the registered person written notice that at the end of a further period of six weeks beginning with the date of service (or such other period as may be substituted by the Secretary of State), the person's registration will be cancelled or

suspended or that he does not propose to take any further action: s 120AB(4), (9) (as so added). If no representations are received within the period mentioned in s 120AB(3) the Secretary of State may cancel or suspend the person's registration at the end of the period so mentioned: s 120AB(5) (as so added).

These provisions do not prevent the Secretary of State from imposing on the registered person a lesser sanction than that specified in the notice thereunder and do not apply where the Secretary of State is satisfied, in the case of a registered person other than a body, that the person has died or is incapable, by reason of physical or mental impairment, of acting as the registered person in relation to applications, or the registered person has requested to be removed from the register: s 120AB(6), (8) (s 120AB(8) amended by SI 2009/203).

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727. Inspections of registered persons and premises.

A person authorised in writing for the purpose by the Secretary of State may require any person appearing to be a registered person¹ or a nominated individual² to produce to him any documents for the purpose of assessing whether the registered person or nominated individual has complied with the conditions of registration³, and it is a condition of a person's registration that, for this purpose only, he must allow a person authorised in writing for the purpose by the Secretary of State to enter any premises⁴ owned or occupied by any person appearing to him to be a registered person or a nominated individual⁵.

1 As to the meaning of 'registered person' see PARA 721 note 1. As to registration generally see PARA 721 et seq.

2 Ie an individual nominated in accordance with the Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 4: see PARA 723.

3 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 8(2). As to the conditions of registration see PARA 722.

4 Ie other than premises occupied exclusively for residential purposes as a private dwelling: Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 8(1).

5 Police Act 1997 (Criminal Records) (Registration) Regulations 2006, SI 2006/750, reg 8(1). As to the delegation of the Secretary of State's functions see PARA 712 note 2. A person exercising such power of entry may do so only at a reasonable hour (reg 8(3)), must comply with any reasonable request (whether before or after entry is gained to the premises) by any person present on the premises to state the purpose for which the power is being exercised, show the authorisation by the Secretary of State for his exercise of the power, and produce evidence of his identity (reg 8(4)), and must make a record of the date and time of his entry, the period for which he remained there and his conduct while there (reg 8(5)). If the person exercising the power is requested to do so by any person present on the premises at the time of entry, he must provide that person with a copy of the record made under reg 8(5).

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(iii) Administration and Compliance

728. Code of practice.

The Secretary of State must publish, and may from time to time revise, a code of practice in connection with the use of information provided to registered persons¹, and if the Secretary of State thinks that the person who acted as the registered person² in relation to an application³ for a criminal record certificate⁴ or an enhanced criminal record certificate⁵ has either failed to comply with such code of practice or acted as the registered person at the request of a body which, or individual who, has failed to comply with the code of practice, he may refuse to issue the certificate⁶ or suspend or cancel the person's registration⁷.

1 Police Act 1997 s 122(1). As to the meaning of 'registered person' see PARA 721 note 1. As to registration see PARA 721 et seq.

2 As to acting as a registered person see PARA 721.

3 Is an application under the Police Act 1997 s 113A or s 113B: see PARA 716.

4 As to the meaning of 'criminal record certificate' see PARA 712.

5 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

6 Police Act 1997 s 122(3), (3A)(a) (s 122(3) amended, s 122(3A), (3B) added, by the Safeguarding Vulnerable Groups Act 2006 s 29; Police Act 1997 s 122(3) further amended by SI 2009/203).

7 Police Act 1997 s 122(3A)(b), (c) (as added: see note 6). Before cancelling or suspending a person's registration under s 122 the Secretary of State must send him written notice of (or transmit electronically) his intention to do so: ss 122(3B), 120AB(1), (7) (s 122(3B) as added (see note 6); s 120AB added by the Criminal Justice Act 2003 Sch 35 paras 1, 9). Every such notice must give the Secretary of State's reasons for proposing to cancel or suspend the registration and inform the person concerned of his right to make representations under the Police Act 1997 s 120AB(3) (which provides that a person who receives such a notice may, within 21 days of service, make representations in writing to the Secretary of State as to why the registration should not be cancelled or suspended): s 120AB(2), (3) (as so added). After considering any such representations, the Secretary of State must give the registered person written notice that at the end of a further period of six weeks beginning with the date of service (or such other period as may be substituted by the Secretary of State), the person's registration will be cancelled or suspended or that he does not propose to take any further action: s 120AB(4), (9) (as so added). If no representations are received within the period mentioned in s 120AB(3) the Secretary of State may cancel or suspend the person's registration at the end of the period so mentioned: s 120AB(5) (as so added).

These provisions do not prevent the Secretary of State from imposing on the registered person a lesser sanction than that specified in the notice thereunder and do not apply where the Secretary of State is satisfied, in the case of a registered person other than a body, that the person has died or is incapable, by reason of physical or mental impairment, of acting as the registered person in relation to applications, or the registered person has requested to be removed from the register: s 120AB(6), (8) (s 120AB(8) amended by SI 2009/203).

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729. Human rights monitoring.

There is an independent monitor for the purposes of the statutory provisions governing criminal record checks¹ whose responsibility is to review²:

- 2442 (1) all cases in which potentially relevant information which ought not to be included in an enhanced criminal record certificate³ is disclosed⁴ to a registered person⁵;
- 2443 (2) a sample of cases in which an enhanced criminal record certificate has included⁶ potentially relevant information which ought to be so included⁷;
- 2444 (3) a sample of cases in which the chief officer of a police force has decided that information must not be included⁸ in a certificate or report or⁹ disclosed¹⁰;
- 2445 (4) all cases in which information is withheld¹¹ from an individual¹²; and
- 2446 (5) a sample of cases in which relevant information¹³ is provided¹⁴ to an individual¹⁵.

The independent monitor must in relation to each year make a report to the Secretary of State about the performance of police forces in exercising their functions under these provisions¹⁶ and may make recommendations to the Secretary of State as to:

- 2447 (a) any guidance issued by the Secretary of State or which the monitor thinks it would be appropriate for the Secretary of State to issue¹⁷;
- 2448 (b) any changes to any enactment which the monitor thinks may be appropriate¹⁸.

1 Ie for the purposes of the Police Act 1997 Pt V (ss 112-127): see PARA 711 et seq. The independent monitor is a person appointed by the Secretary of State for such period, not exceeding three years, as the Secretary of State decides (although a person may be appointed for a further period or periods) and on such terms as the Secretary of State decides: s 119B(2), (3) (s 119B added by the Safeguarding Vulnerable Groups Act 2006 s 28). The Secretary of State may terminate the appointment of the independent monitor before the end of the three-year period specified by giving the monitor notice of the termination not less than three months before it is to take effect: s 119B(4) (as so added).

The chief officer of a police force must provide to the independent monitor such information as the monitor reasonably requires in connection with the exercise of his functions under these provisions: s 119B(9) (as so added).

2 Ie in order to ensure compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (right to respect for private and family life, home and correspondence: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq): Police Act 1997 s 119B(6) (as added: see note 1).

3 Ie a certificate issued under the Police Act 1997 s 113B: see PARAS 713, 717.

4 Ie pursuant to the Police Act 1997 s 113B(6)(b): see PARA 717.

5 Police Act 1997 s 119B(5)(a) (as added: see note 1). As to the meaning of 'registered person' see PARA 721 note 1. As to registration see PARA 721 et seq.

6 Ie pursuant to the Police Act 1997 s 113B(4)(b): see PARA 715.

7 Police Act 1997 s 119B(5)(b) (as added: see note 1).

- 8 le pursuant to the Police Act 1997 s 113B(4)(b): see PARA 715.
- 9 le pursuant to the Police Act 1997 s 113B(5)(c), (6)(b): see PARAS 715, 717.
- 10 Police Act 1997 s 119B(5)(c) (as added: see note 1).
- 11 le because it is information to which the Safeguarding Vulnerable Groups Act 2006 s 24(9) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 697) applies.
- 12 Police Act 1997 s 119B(5)(d) (as added: see note 1).
- 13 le within the meaning of the Safeguarding Vulnerable Groups Act 2006 s 24(8)(b) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 697).
- 14 le in pursuance of the Safeguarding Vulnerable Groups Act 2006 s 24(4)(a) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 697).
- 15 Police Act 1997 s 119B(5)(e) (as added: see note 1).
- 16 Police Act 1997 s 119B(7) (as added: see note 1).
- 17 Police Act 1997 s 119B(8)(a) (as added: see note 1).
- 18 Police Act 1997 s 119B(8)(b) (as added: see note 1).

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730. Falsification of certificates.

A person commits an offence¹ if, with intent to deceive, he:

- 2449 (1) makes a false certificate²;
- 2450 (2) alters a certificate³;
- 2451 (3) uses a certificate which relates to another person in a way which suggests that it relates to himself⁴; or
- 2452 (4) allows a certificate which relates to him to be used by another person in a way which suggests that it relates to that other person⁵.

A person also commits an offence if he knowingly makes a false statement for the purpose of obtaining, or enabling another person to obtain, a certificate⁶.

1 A person who is guilty of an offence under these provisions is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: Police Act 1997 s 123(3). As to the standard scale see PARA 142. As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 51 weeks (see the Criminal Justice Act 2003 s 281(4), (5), (7) (not yet in force)), although this does not affect the penalty for any offence committed before that day (s 281(6)(b) (not yet in force)). At the date at which this volume states the law no such day had been appointed.

2 Police Act 1997 s 123(1)(a). The 'certificate' referred to in the text is a certificate under Pt V (ss 112-127), ie a criminal record certificate, an enhanced criminal record certificate or (as from a day to be appointed) a criminal conviction certificate: see PARA 711 et seq. As to the meaning of 'certificate' see PARA 711 note 1.

3 Police Act 1997 s 123(1)(b).

4 Police Act 1997 s 123(1)(c).

5 Police Act 1997 s 123(1)(d).

6 Police Act 1997 s 123(2).

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731. Unauthorised disclosure.

Subject to a number of specified exceptions¹:

- 2453 (1) a member, officer or employee of a body registered as a registered person² commits an offence³ if he discloses information provided following an application⁴ for a criminal record certificate⁵ or an enhanced criminal record certificate⁶, unless he discloses it in the course of his duties:
- .34**
- 53. (a) to another member, officer or employee of the registered body⁷;
 - 54. (b) to a member, officer or employee of a body at the request of which the registered body acted as the registered person⁸ in relation to the application⁹; or
 - 55. (c) to an individual at whose request the registered body acted as the registered person in relation to the relevant application¹⁰;
- .35**
- 2454 (2) where information is provided¹¹ following an application for a criminal record certificate or an enhanced criminal record certificate, in relation to which the person who acted as the registered person did so at the request of an unregistered body¹², a member, officer or employee of the body commits an offence if he discloses the information, unless he discloses it in the course of his duties to another member, officer or employee of that body¹³;
- 2455 (3) where information is provided¹⁴ following an application for a criminal record certificate or an enhanced criminal record certificate in relation to which an individual acted as the registered person, or in relation to which the person who acted as the registered person did so at the request of an individual, the individual commits an offence if he discloses the information, unless he discloses it to an employee of his for the purpose of the employee's duties, and an employee of the individual commits an offence if he discloses the information unless he discloses it in the course of his duties to another employee of the individual¹⁵; and
- 2456 (4) where information provided¹⁶ on an application for a criminal record certificate or an enhanced criminal record certificate is disclosed to a person and the disclosure is an offence under these provisions¹⁷ the person to whom the information is disclosed commits an offence if he discloses it to any other person¹⁸.

These provisions¹⁹ do not apply to a disclosure of certain information provided following a request by the Secretary of State to a chief officer of police for additional information in connection with an application for an enhanced criminal record certificate²⁰ where the disclosure is made with the written consent of the chief officer of police who provided the information²¹; and nor do they apply to a disclosure of information contained in a criminal record certificate or an enhanced criminal record certificate which is made:

- 2457 (i) with the written consent of the applicant for the certificate²²;
- 2458 (ii) to a government department²³;
- 2459 (iii) to a person appointed to an office by virtue of any enactment²⁴;
- 2460 (iv) in accordance with an obligation to provide information under or by virtue of any enactment²⁵; or

2461 (v) by an employment agency or an employment business²⁶, whether or not in response to an exempted question, for the purpose of consideration by an educational institution²⁷ or an institution within the further education sector²⁸ of a person's suitability for a position at that institution²⁹.

Provision is also made in connection with unauthorised disclosures by persons exercising functions delegated by the Secretary of State³⁰.

1 See the Police Act 1997 s 124(5), (6); and the text and notes 19-29. Nothing in ss 112-119 (see PARA 711 et seq) prejudices any power which exists apart from the Police Act 1997 to disclose information or to make records available: s 127.

2 Ie registered under the Police Act 1997 s 120: see PARA 722. As to the meaning of 'registered person' see PARA 721 note 1. As to registration see PARA 721 et seq.

3 A person who is guilty of an offence under these provisions is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale or to both: Police Act 1997 s 124(7). As to the standard scale see PARA 142. As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 51 weeks (see the Criminal Justice Act 2003 s 281(4), (5), (7) (not yet in force)), although this does not affect the penalty for any offence committed before that day (s 281(6)(b) (not yet in force)). At the date at which this volume states the law no such day had been appointed.

4 Ie an application under the Police Act 1997 s 113A or s 113B: see PARA 716.

5 As to the meaning of 'criminal record certificate' see PARA 712.

6 As to the meaning of 'enhanced criminal record certificate' see PARA 713.

7 Police Act 1997 s 124(1)(a) (s 124(1)-(6) amended by the Serious Organised Crime and Police Act 2005 Sch 14 paras 1, 12; Police Act 1997 s 124(1)(b), (c), (2), (3) further amended by SI 2009/203).

8 As to acting as a registered person see PARA 721.

9 Police Act 1997 s 124(1)(b) (as amended: see note 7).

10 Police Act 1997 s 124(1)(c) (as amended: see note 7).

11 Ie under the Police Act 1997 s 113A or s 113B: see PARA 716.

12 Ie a body which is not registered under the Police Act 1997 s 120: see PARA 722.

13 Police Act 1997 s 124(2) (as amended: see note 7).

14 See note 11.

15 Police Act 1997 s 124(3) (as amended: see note 7).

16 See note 11.

17 Or would be an offence but for the application of the exceptions specified in the Police Act 1997 s 124(5), (6)(a), (d), (e) or (f): see the text and notes 19-29.

18 Police Act 1997 s 124(4) (as amended: see note 7).

19 Ie the Police Act 1997 s 124(1)-(4) (see the text and notes 1-18).

20 Ie information provided in accordance with the Police Act 1997 s 113B(5): see PARA 715.

21 Police Act 1997 s 124(5) (as amended: see note 7).

22 Police Act 1997 s 124(6)(a) (as amended: see note 7).

23 Police Act 1997 s 124(6)(b) (as amended: see note 7).

24 Police Act 1997 s 124(6)(c) (as amended: see note 7).

25 Police Act 1997 s 124(6)(d) (as amended: see note 7).

26 The references to an 'employment agency' and an 'employment business' are references to such an agency or business within the meanings given by the Employment Agencies Act 1973 s 13 (see **TRADE AND INDUSTRY** vol 97 (2010) PARA 881); Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 12(2) (added by SI 2006/2181).

27 Is an institution which is exclusively or mainly for the provision of full-time education to children: see the Criminal Justice and Court Services Act 2000 s 42(1).

28 Is within the meaning given by the Further and Higher Education Act 1992 s 91(3): see **EDUCATION** vol 15(2) (2006 Reissue) PARA 579.

29 Police Act 1997 s 124(6)(e), (f) (as amended: see note 7); Police Act 1997 (Criminal Records) Regulations 2002, SI 2002/233, reg 12(1) (added by SI 2006/2181).

30 See PARA 732.

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732. Disclosure of information obtained in connection with delegated functions.

Subject to a number of specified exceptions¹ any person who is engaged in the discharge of functions conferred on the Secretary of State² commits an offence³ if he discloses information which has been obtained by him in connection with those functions and which relates to a particular person unless he discloses the information, in the course of his duties:

- 2462 (1) to another person engaged in the discharge of those functions⁴;
- 2463 (2) to the chief officer of a police force⁵ in connection with a request⁶ to provide information to the Secretary of State⁷; or
- 2464 (3) to an applicant or registered person⁸ who is entitled⁹ to the information disclosed to him¹⁰.

These provisions do not apply to a disclosure of information which is made:

- 2465 (a) with the written consent of the person to whom the information relates¹¹;
- 2466 (b) to a government department¹²;
- 2467 (c) to a person appointed to an office by virtue of any enactment¹³;
- 2468 (d) in accordance with an obligation to provide information under or by virtue of any enactment¹⁴; or
- 2469 (e) for some other purpose specified in regulations made by the Secretary of State¹⁵.

Where information is disclosed to a person and the disclosure is an offence¹⁶, or would be such an offence but for head (a), (d) or (e) above¹⁷, the person to whom the information is disclosed commits an offence if he discloses it to any other person¹⁸.

1 See the Police Act 1997 s 124A(3); and the text and notes 11-15.

2 The functions conferred by the Police Act 1997 Pt V (ss 112-127) (see PARA 711 et seq). As to the Secretary of State's power to delegate see PARA 712 note 2.

3 A person who is guilty of an offence under these provisions is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 3 on the standard scale or to both: Police Act 1997 s 124A(4), (5) (s 124A added by the Criminal Justice Act 2003 Sch 35 paras 1, 11). As to the standard scale see PARA 142. As from a day to be appointed this maximum term of imprisonment is increased to a maximum term of 51 weeks (see the Criminal Justice Act 2003 s 281(4), (5), (7) (not yet in force)), although this does not affect the penalty for any offence committed before that day (s 281(6)(b) (not yet in force)). At the date at which this volume states the law no such day had been appointed.

4 Police Act 1997 s 124A(1)(a) (as added: see note 3).

5 For these purposes the reference to a 'police force' includes any body mentioned in the Police Act 1997 s 113B(10)(a)-(i), (11) (see PARA 715); and the reference to a 'chief officer' must be construed accordingly: s 124A(6) (as added (see note 3); further added by the Serious Organised Crime and Police Act 2005 s 165(3)).

6 The under the Police Act 1997 Pt V.

7 Police Act 1997 s 124A(1)(b) (as added: see note 3).

- 8 As to the meaning of 'registered person' see PARA 721 note 1. As to registration see PARA 721 et seq.
- 9 le under the Police Act 1997 Pt V.
- 10 Police Act 1997 s 124A(1)(c) (as added: see note 3).
- 11 Police Act 1997 s 124A(3)(a) (as added: see note 3).
- 12 Police Act 1997 s 124A(3)(b) (as added: see note 3).
- 13 Police Act 1997 s 124A(3)(c) (as added: see note 3).
- 14 Police Act 1997 s 124A(3)(d) (as added: see note 3).
- 15 Police Act 1997 s 124A(3)(e) (as added: see note 3). At the date at which this volume states the law no other such purpose had been specified.
- 16 Police Act 1997 s 124A(2)(a) (as added: see note 3). The text refers to an offence under s 124A(1): see the text and notes 1-10.
- 17 Police Act 1997 s 124A(2)(b) (as added: see note 3).
- 18 Police Act 1997 s 124A(2) (as added: see note 3).

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(i) Introduction/733. Transfer of responsibility from local probation boards to probation trusts and other public bodies.

(3) PROVISION OF PROBATION SERVICES

(i) Introduction

733. Transfer of responsibility from local probation boards to probation trusts and other public bodies.

At the date at which this volume states the law responsibility for making arrangements for the provision of probation services in England and Wales is in the process of being transferred from local probation boards to probation trusts and other public bodies¹. This transfer is being gradually implemented by geographical area², and at the date at which this volume states the law had taken place only in relation to the probation areas of Greater Manchester, Humberside, Lancashire, Leicestershire (including Rutland), Merseyside, West Mercia, Dyfed Powys and South Wales, for each of which a probation trust has been established in place of the local probation board³.

¹ Local probation boards are responsible for making arrangements for the provision of probation services in England and Wales under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10). Those provisions are being progressively replaced by the Offender Management Act 2007 Pt 1 (ss 1-15), under which such responsibility is transferred to probation trusts and other public bodies.

² The specified geographical areas are based on the probation areas under the existing probation structure in the Criminal Justice and Court Services Act 2000 Pt 1, which are coterminous with police areas: see s 4(5); the Police Act 1996 Sch 1; PARA 737; and **POLICE** vol 36(1) (2007 Reissue) PARA 136.

³ See the Offender Management Act 2007 (Commencement No 2 and Transitional Provision) Order 2008, SI 2008/504, art 4; the Offender Management Act 2007 (Establishment of Probation Trusts) Order 2008, SI 2008/598, art 2; the Offender Management Act 2007 (Establishment of Probation Trusts) Order 2009, SI 2009/504, art 2; and the Offender Management Act 2007 (Commencement No 4) Order 2009, SI 2009/547, art 2. Thus at the date at which this volume states the law the Offender Management Act 2007 ss 1, 2, 3(1)-(5), (7), 4, 6, 7(3), 8, 10, 11(1), 12(3), 15 (ie the new system whereby arrangements are the responsibility of probation trusts and other public bodies: see PARAS 740-744) had been brought into force in the areas specified in the text and the corresponding provisions of the Criminal Justice and Court Services Act 2000 (ie ss 1-5, 8, 10, 18, 20(2), 21(5), 22) (ie the existing system whereby arrangements are the responsibility of local probation boards: see PARAS 740-744) had been repealed in relation to those areas. The existing system (local probation boards) continues in effect for all other areas pending further commencement and establishment orders.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(i) Introduction/734. Purposes of the probation service.

734. Purposes of the probation service.

The purposes of probation are broadly the same both under the existing system for the provision of probation services by local probation boards¹ and under the new system whereby such provision is made by probation trusts and other public bodies². They are the purposes of providing for:

- 2470 (1) courts to be given assistance in determining the appropriate sentences to pass, and making other decisions, in respect of persons charged with or convicted of offences³;
- 2471 (2) the supervision and rehabilitation of such persons⁴, including in particular:
 - .36 56. (a) giving effect to community orders and youth rehabilitation orders⁵;
 - 57. (b) giving effect to suspended sentence orders⁶;
 - 58. (c) supervising persons released from prison⁷ on licence⁸;
 - 59. (d) providing accommodation in approved premises⁹; and
 - 60. (e) in relation to the new system only, assisting in the rehabilitation of offenders who are being held in prison¹⁰;
- .37 2472 (3) persons¹¹ to be given assistance in determining whether conditional cautions¹² should be given and which conditions to attach to conditional cautions¹³; and
- 2473 (4) the supervision and rehabilitation of persons to whom conditional cautions are given¹⁴;
- 2474 (5) the giving of information to victims of persons charged with or convicted of offences¹⁵; and
- 2475 (6) in relation to the new system only, the giving of assistance to persons remanded on bail¹⁶.

1 As to the existing system for the provision of probation services by local probation boards see the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10); and PARA 737 et seq. As to the transition between the existing and the new systems see PARA 733.

2 As to the new system for the provision of probation services by probation trusts and other public bodies see the Offender Management Act 2007 Pt 1 (ss 1-15); and PARA 740 et seq.

3 Criminal Justice and Court Services Act 2000 s 1(1)(a); Offender Management Act 2007 s 1(1)(a). The Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by local probation boards, has been repealed by the Offender Management Act 2007 Sch 5 Pt 1 and replaced by the corresponding provisions of Pt 1 (ss 1-15) (provision of probation services by probation trusts and other public bodies), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

4 Criminal Justice and Court Services Act 2000 s 1(1)(b) (partly repealed: see note 3); Offender Management Act 2007 s 1(1)(c). In the Offender Management Act 2007 s 1 (ie for the purposes of the new system: see note 2) this purpose also applies in relation to persons who are convicted of an offence under the law of a country outside England and Wales and receive a sentence which is to any extent to be served or carried out in England and Wales, as it applies in relation to persons convicted of offences: s 1(3).

5 Criminal Justice and Court Services Act 2000 s 1(2)(a) (repealed in relation to certain areas: see note 3); Offender Management Act 2007 s 1(2)(a). Under the new system (see the Offender Management Act 2007 Pt 1; and note 1), where the purpose of providing for the supervision and rehabilitation of convicted offenders is

extended to persons convicted abroad (see s 1(3); and note 4), this provision should be read as referring to any sentence corresponding to a community order or a youth rehabilitation order which is to be carried out in England and Wales: s 1(2)(a).

For the purposes of the Criminal Justice and Court Services Act 2000 s 1 (ie the existing system: see note 2), 'community order' means a community order as defined by the Criminal Justice Act 2003 s 177 (see PARA 163 et seq) and is expressed so as to include service community orders and overseas community orders under the Armed Forces Act 2006 ss 178, 182 (see **ARMED FORCES**) and youth rehabilitation orders under the Criminal Justice and Immigration Act 2008 Pt 1 (ss 1-8) (see PARA 202 et seq): Criminal Justice and Court Services Act 2000 s 1(2)(a) (amended by the Criminal Justice Act 2003 Sch 32 para 134 (subject to a saving in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(b), (3)); the Armed Forces Act 2006 Sch 16 para 177; and the Criminal Justice and Immigration Act 2008 Sch 4 para 69).

For the purposes of the Offender Management Act 2007 s 1 (ie the new system: see note 2), 'community order' means:

1086 (1) a community order within the meaning of the Criminal Justice Act 2003 (see s 177; and PARA 163 et seq) and a youth rehabilitation order under the Criminal Justice and Immigration Act 2008 Pt 1 (see s 1; and PARA 202 et seq) (Offender Management Act 2007 s 1(4)(a), (aa) (s 1(4) (aa), (c) added by the Criminal Justice and Immigration Act 2008 Sch 4 para 99)); and

1087 (2) a community order within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000 (see PARA 163 et seq) as it applies to offences committed before 4 April 2005 and a youth community order within the meaning of that Act (see PARA 229 et seq) as it applies to offences committed before the Criminal Justice and Immigration Act 2008 s 1 comes into force (as to which see PARA 202) (Offender Management Act 2007 s 1(4)(b), (c) (s 1(4)(c) as so added)).

6 Criminal Justice and Court Services Act 2000 s 1(2)(d) (repealed in relation to certain areas: see note 3); Offender Management Act 2007 s 1(2)(a). In relation to both the existing and the old systems 'suspended sentence order' refers to an order within the meaning of the Criminal Justice Act 2003 s 189 (see PARA 110): Criminal Justice and Court Services Act 2000 s 1(2)(d) (amended by the Criminal Justice Act 2003 Sch 32 para 134 (subject to a saving in respect of offences committed before 4 April 2005: see the Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) Order 2005, SI 2005/950, Sch 2 para 5(1), (2)(b), (3))); Offender Management Act 2007 s 1(4).

7 For the purposes of the Offender Management Act 2007 s 1 'prison' includes a young offender institution (see PARA 85) and a secure training centre (see **PRISONS** vol 36(2) (Reissue) PARA 657 et seq): s 1(4). The term is not defined for the purposes of the Criminal Justice and Court Services Act 2000 s 1.

8 Criminal Justice and Court Services Act 2000 s 1(2)(b) (repealed in relation to certain areas: see note 3); Offender Management Act 2007 s 1(2)(c).

9 Criminal Justice and Court Services Act 2000 s 1(2)(c) (repealed in relation to certain areas: see note 3); Offender Management Act 2007 s 1(2)(d).

10 Offender Management Act 2007 s 1(2)(d).

11 For the purposes of the Criminal Justice and Court Services Act 2000 s 1 and, until a day to be appointed, the Offender Management Act 2007 s 1, the persons referred to are 'authorised persons' within the meaning of the Criminal Justice Act 2003 Pt 3 (ss 22-27) (conditional cautions: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1044); as from that day the Offender Management Act 2007 s 1 no longer requires that the person in question be so 'authorised': Criminal Justice and Court Services Act 2000 s 1(1A)(a), (4) (s 1(1A), (4) added by the Criminal Justice Act 2003 s 26(1), (2); Criminal Justice and Court Services Act 2000 s 1 repealed in relation to certain areas: see note 3); Offender Management Act 2007 s 1(1)(b), (4) (prospectively amended by the Criminal Justice and Immigration Act 2008 Sch 26 para 83). At the date at which this volume states the law no day had been appointed for the coming into force of the amendments effected by the Criminal Justice and Immigration Act 2008.

12 le within the meaning of the Criminal Justice Act 2003 Pt 3 (ss 22-27) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1044).

13 Criminal Justice and Court Services Act 2000 s 1(1A)(a) (as added and partly repealed: see notes 3, 11); Offender Management Act 2007 s 1(1)(b) (prospectively amended: see note 11).

14 Criminal Justice and Court Services Act 2000 s 1(1A)(b) (as added and partly repealed: see notes 3, 11); Offender Management Act 2007 s 1(1)(e).

15 Offender Management Act 2007 s 1(1)(f); Local Probation Boards (Miscellaneous Provisions) Regulations 2001, SI 2001/786, reg 2. 'Victim' includes a person claiming to be a victim: Offender Management Act 2007 s 1(1)(f); Local Probation Boards (Miscellaneous Provisions) Regulations 2001, SI 2001/786, reg 2.

The Local Probation Boards (Miscellaneous Provisions) Regulations 2001, SI 2001/786, reg 2 is made pursuant to the Criminal Justice and Court Services Act 2000 s 1(3) (repealed in relation to certain areas: see note 3), under which the Secretary of State may by regulations extend for the purposes of s 1(1) to include other prescribed purposes relating to persons charged with or convicted of offences. Such a power also exists for the purposes of the Offender Management Act 2007 s 1 (see s 1(5)), but at the date at which this volume states the law had not been exercised.

16 Offender Management Act 2007 s 1(1)(d).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

734 Purposes of the probation service

NOTE 11--Appointed day is 1 April 2010: SI 2010/712.

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735. Aims of the probation service.

The aims of probation under the existing system for the provision of probation services by local probation boards¹ and the new system whereby such provision is made by probation trusts and other public bodies² are identical. They are:

- 2476 (1) the protection of the public³;
- 2477 (2) the reduction of re-offending⁴;
- 2478 (3) the proper punishment of offenders⁵;
- 2479 (4) ensuring offenders' awareness of the effects of crime on the victims of crime and the public⁶; and
- 2480 (5) the rehabilitation of offenders⁷.

1 As to the existing system for the provision of probation services by local probation boards see the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10); and PARA 737 et seq. As to the transition between the existing and the new systems see PARA 733. In so far as the aims listed in the text apply in the context of the existing system for the provision of probation services by local probation boards, they are stated to apply to the functions of the Secretary of State under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10) and the functions of local probation boards, and officers of local probation boards, under the Criminal Justice and Court Services Act 2000 or any other enactment so far as they may be exercised for the purposes mentioned in s 1 (see PARA 734): s 2(1). The Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by local probation boards, has been repealed by the Offender Management Act 2007 Sch 5 Pt 1 and replaced by the corresponding provisions of Pt 1 (ss 1-15) (provision of probation services by probation trusts and other public bodies), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

2 As to the new system for the provision of probation services by probation trusts and other public bodies see the Offender Management Act 2007 Pt 1 (ss 1-15); and PARA 740 et seq.

3 Criminal Justice and Court Services Act 2000 s 2(2)(a) (repealed in relation to certain areas: see note 1); Offender Management Act 2007 s 2(4)(a).

4 Criminal Justice and Court Services Act 2000 s 2(2)(b) (repealed in relation to certain areas: see note 1); Offender Management Act 2007 s 2(4)(b).

5 Criminal Justice and Court Services Act 2000 s 2(2)(c) (repealed in relation to certain areas: see note 1); Offender Management Act 2007 s 2(4)(c).

6 Criminal Justice and Court Services Act 2000 s 2(2)(d) (repealed in relation to certain areas: see note 1); Offender Management Act 2007 s 2(4)(d).

7 Criminal Justice and Court Services Act 2000 s 2(2)(e) (repealed in relation to certain areas: see note 1); Offender Management Act 2007 s 2(4)(e).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(i) Introduction/736. Extension of probation arrangements to service proceedings abroad.

736. Extension of probation arrangements to service proceedings abroad.

Independently of the transfer of responsibility for the making of arrangements for the provision of probation services from local probation boards to probation trusts and other public bodies¹ it continues to be provided that a local probation board² may, in pursuance of arrangements made with the Secretary of State, carry out activities anywhere in the world in relation to persons who are or have been subject to proceedings before the Court Martial, the Summary Appeal Court or the Service Civilian Court³. Any activities carried out in relation to such persons must correspond to activities which the board is required or authorised to carry out in relation to persons who have been charged with or convicted of criminal offences⁴.

1 See PARA 733.

2 As to the establishment of local probation boards see PARA 737.

3 Criminal Justice and Court Services Act 2000 s 5A(1) (s 5A added by the Armed Forces Act 2006 Sch 16 para 178 and substituted by s 327).

4 Criminal Justice and Court Services Act 2000 s 5A(2) (as added and substituted: see note 3).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(ii) Provision of Probation Services by Local Probation Boards/737. Establishment of local probation boards and areas.

(ii) Provision of Probation Services by Local Probation Boards

737. Establishment of local probation boards and areas.

For the purpose of implementing the existing system for the provision of probation services by local probation boards¹, England and Wales is divided into areas² for each of which there is a board (a 'local probation board') which exercises the functions conferred³ on it by statute⁴. The initial division of areas for this purpose⁵ is:

- 2481 (1) police areas into which England and Wales, apart from London, are divided⁶; and
- 2482 (2) the area comprising the Metropolitan Police District⁷ and the City of London Police Area⁸.

In consequence of the phased introduction of the new system for the provision of probation services by probation trusts and other public bodies⁹, the local probation boards so constituted are being abolished area by area in accordance with the coming into effect of the new provisions¹⁰.

1 At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733.

2 Criminal Justice and Court Services Act 2000 s 4(1). At the date at which this volume states the law the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by local probation boards, had been repealed by the Offender Management Act 2007 Sch 5 Pt 1 and replaced by the corresponding provisions of Pt 1 (ss 1-15) (provision of probation services by probation trusts and other public bodies: see PARA 740 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

3 Ie by the Criminal Justice and Court Services Act 2000 or any other enactment.

4 Criminal Justice and Court Services Act 2000 s 4(2) (repealed in relation to certain areas: see note 2). Provision is made as to the constitution of local probation boards and their powers (see s 4(3), Sch 1 (amended by the Courts Act 2003 Sch 8 para 393; and the Constitutional Reform Act 2005 Sch 4 para 298(1)-(3)); the Local Probation Boards (Appointment) Regulations 2000, SI 2000/3342 (amended by SI 2001/786; SI 2005/617; SI 2006/2664); the Local Probation Boards (Miscellaneous Provisions) Regulations 2001, SI 2001/786, regs 3-9 (amended by SI 2005/2114; SI 2006/2664; SI 2007/1335); and the Local Probation Boards (Appointments and Miscellaneous Provisions) Regulations 2001, SI 2001/1035) and for the transfer of employees, property, rights and liabilities of probation committees (of which local probation boards are successor bodies) (see the Criminal Justice and Court Services Act 2000 ss 18-23, Sch 3 (amended by SI 2003/2867; SI 2003/3191; prospectively amended (in accordance with the transfer of responsibility for the provision of probation services from local probation boards to probation trusts and other public bodies) by the Offender Management Act 2007 Sch 5 Pt 1)). For the power of the Secretary of State to amend the constitution of a board which is underperforming see PARA 739.

5 The division of England and Wales into areas for this purpose may be altered from time to time by order made by the Secretary of State: Criminal Justice and Court Services Act 2000 s 4(6) (repealed in relation to certain areas: see note 2). At the date at which this volume states the law no such order had been made.

6 Criminal Justice and Court Services Act 2000 s 4(5)(a) (repealed in relation to certain areas: see note 2). As to these areas see the Police Act 1996 Sch 1; and **POLICE** vol 36(1) (2007 Reissue) PARA 136.

7 As to the Metropolitan Police and the Metropolitan Police District see **POLICE** vol 36(1) (2007 Reissue) PARA 137.

8 Criminal Justice and Court Services Act 2000 s 4(5)(b) (repealed in relation to certain areas: see note 2). As to the City of London Police Area see **POLICE** vol 36(1) (2007 Reissue) PARA 138.

9 le under the Offender Management Act 2007 Pt 1 (ss 1-15): see PARA 733; and PARA 740 et seq.

10 Offender Management Act 2007 s 11(1). For the areas in which the transition between the existing and new systems has taken place see PARA 733. Provision is made as to the transfers of property and staff in accordance with this transition: see s 11(2), Sch 2.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(ii) Provision of Probation Services by Local Probation Boards/738. Functions of local probation boards.

738. Functions of local probation boards.

Under the existing system for the provision of probation services by local probation boards¹ it is a function of a local probation board²:

- 2483 (1) to make arrangements³ for ensuring that sufficient provision is made in respect of its area for the probation purposes⁴;
- 2484 (2) to make arrangements for ensuring the performance of any other statutory functions conferred⁵ on the board or officers of the board⁶; and
- 2485 (3) to implement or ensure the implementation of any arrangements it makes under these⁷ provisions⁸.

In exercising these functions boards and their officers must have regard to the aims of probation⁹.

A local probation board may also provide for its staff to co-operate with persons in its area who are concerned with the prevention or reduction of crime or with giving assistance to the victims of crime¹⁰.

¹ At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733.

² As to the establishment of local probation boards and areas see PARA 737. Regulations may confer further functions on local probation boards or officers of local probation boards in addition to those discussed in this paragraph (Criminal Justice and Court Services Act 2000 s 5(5)): for the orders so made (conferring functions which are generally administrative) see PARA 737 note 4. See also PARA 739 (connected and default powers of the Secretary of State).

At the date at which this volume states the law the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by local probation boards, had been repealed by the Offender Management Act 2007 Sch 5 Pt 1 and replaced by the corresponding provisions of Pt 1 (ss 1-15) (provision of probation services by probation trusts and other public bodies: see PARA 740 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

³ In addition to making arrangements for provision to be made by its staff, a local probation board may, for example, make arrangements with organisations for provision to be made on the board's behalf by those organisations, and arrangements so made may provide for the organisations to designate individuals who may perform functions of officers of the board: Criminal Justice and Court Services Act 2000 s 5(1)(a) (repealed in relation to certain areas: see note 2). Boards may also make arrangements with individuals who are not members of the board's staff under which they may perform functions of officers of the board: s 5(1)(b) (as so partly repealed). The provision that may be made in pursuance of any such arrangements includes providing services to any person and in particular giving assistance to persons remanded on bail or for whom officers of the board have responsibilities and providing accommodation in approved premises (see PARA 746) for persons who have at any time been charged with or convicted of an offence: s 5(3) (as so partly repealed). For the purposes of Pt 1 (ss 1-25) 'organisation' includes a public body and a private or voluntary organisation: s 25.

A local probation board may also make an arrangement with another local probation board under which it provides on behalf of the other board, in respect of the other board's area, any services which it could provide under s 5 in respect of its own area and may charge the other local probation board for any services it provides in pursuance of the arrangement: s 5(7) (as so partly repealed).

References in the Criminal Justice and Court Services Act 2000 and any other enactment to an 'officer of a local probation board' are references to:

1088 (1) any member of the staff of a local probation board appointed to exercise the functions of an officer of the board (Criminal Justice and Court Services Act 2000 s 4(4)(a) (as so partly repealed)); and

1089 (2) any other individual exercising functions of an officer of a local probation board by virtue of s 5(2) (s 4(4)(b) (as so partly repealed)).

Section 5(2) (as so partly repealed) provides that in addition to making arrangements for provision to be made by its staff, a local probation board may (for example) make arrangements with organisations for provision to be made on the board's behalf by the organisations (s 5(2)(a) (as so partly repealed)) and make arrangements with individuals who are not members of the board's staff under which they may perform functions of officers of the board (s 5(2)(b) (as so partly repealed)). Arrangements under s 5(2)(a) may provide for the organisations to designate individuals who may perform functions of officers of the board: s 5(2) (as so partly repealed).

4 Criminal Justice and Court Services Act 2000 s 5(1)(a) (repealed in relation to certain areas: see note 2). The 'probation purposes' are the purposes set out in s 1: see PARA 734.

5 le by virtue of the Criminal Justice and Court Services Act 2000 or any other enactment.

6 Criminal Justice and Court Services Act 2000 s 5(1)(b), (c) (repealed in relation to certain areas: see note 2).

7 le under the Criminal Justice and Court Services Act 2000 s 5.

8 Criminal Justice and Court Services Act 2000 s 5(1) (repealed in relation to certain areas: see note 2).

9 Criminal Justice and Court Services Act 2000 s 2(1)(b) (repealed in relation to certain areas: see note 2). As to the aims to which a local probation board is to have regard in exercising its functions see PARA 735.

10 Criminal Justice and Court Services Act 2000 s 5(4) (repealed in relation to certain areas: see note 2). A local probation board may give grants or other financial assistance to any person but only in pursuance of regulations: s 5(6) (as so partly repealed).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(ii) Provision of Probation Services by Local Probation Boards/739. Default powers of Secretary of State.

739. Default powers of Secretary of State.

Under the existing system for the provision of probation services by local probation boards¹ the Secretary of State has the function of ensuring that provision is made throughout England and Wales for the probation purposes², and it is for him to determine whether or not any provision made by a local probation board³ is sufficient⁴. Where it appears to him that the board is failing to perform the functions conferred on it⁵ or that its arrangements for performing those functions do not represent good value for money, he may by order (a 'management order') make specified modifications in respect of the management of the board⁶.

Where services are required by local probation boards in connection with the exercise of their functions but, with a view to obtaining better value for money or to improving the standard of the services or the efficiency of their provision, those services are better provided by persons other than the staff of local probation boards, the Secretary of State may by order provide for any such services to be provided not by the staff of local probation boards but by others under arrangements made with the boards⁷.

In the exercise of his functions under these provisions the Secretary of State must have regard to the aims of probation⁸.

1 At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733.

2 Criminal Justice and Court Services Act 2000 s 3(1). The 'probation purposes' are the purposes set out in s 1: see PARA 734, and the Secretary of State may make any payment he considers appropriate towards expenditure incurred by any person for any of those purposes: s 3(2) (as so partly repealed). If he considers it appropriate, he may make payment on conditions which may, among other things, regulate the purposes for which the payment or any part of it may be used and require payment to the Secretary of State in specified circumstances: s 3(3), (4) (as so partly repealed).

At the date at which this volume states the law the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by local probation boards, had been repealed by the Offender Management Act 2007 Sch 5 Pt 1 and replaced by the corresponding provisions of Pt 1 (ss 1-15) (provision of probation services by probation trusts and other public bodies: see PARA 740 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

3 As to the establishment and functions of local probation boards see PARAS 737-738.

4 Criminal Justice and Court Services Act 2000 s 5(8) (repealed in relation to certain areas: see note 2).

5 Ie under the Criminal Justice and Court Services Act 2000 s 5: see PARA 738.

6 Criminal Justice and Court Services Act 2000 s 10(1)-(3) (repealed in relation to certain areas: see note 2). A management order may, by modifying the application of Sch 1 (see PARA 737 note 4), provide for the board to comprise persons determined in accordance with an arrangement made between the Secretary of State and an organisation (a 'management agreement'), and may make any other modifications which appear to the Secretary of State to be necessary or expedient in consequence of that provision or of the management agreement: s 10(3) (as so partly repealed). A management order may also provide for the persons determined in accordance with the management arrangement to replace all or any of the chairman, the chief officer and the other existing members of the board, and vacancies occurring among the replacements are to be filled in accordance with the management arrangement: s 10(4) (as so partly repealed). The power to revoke a management order is exercisable at any time when the Secretary of State considers it necessary or expedient

to revoke it: s 10(5) (as so partly repealed). See also s 10(6) (as so partly repealed) which makes provision for the membership of the boards on the revocation of a management order.

7 Criminal Justice and Court Services Act 2000 s 8(1), (3) (repealed in relation to certain areas: see note 2). The order may provide that only the Secretary of State or an organisation or an individual of a description specified in the order may provide the services: s 8(2) (as so partly repealed). Such orders, being local in nature, are not recorded in this work.

8 Criminal Justice and Court Services Act 2000 s 2(1)(a) (repealed in relation to certain areas: see note 2). As to the aims of the probation service see PARA 735.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iii) Provision of Probation Services by Probation Trusts and other Public Bodies/740. Establishment and purposes of probation trusts.

(iii) Provision of Probation Services by Probation Trusts and other Public Bodies

740. Establishment and purposes of probation trusts.

Under the new system for the provision of probation services¹ the Secretary of State may by order establish a probation trust for purposes specified in the order². The trusts which had been established at the date at which this volume states the law³ were established for the purposes of:

2486 (1) the making or performance by the trust of contracts with the Secretary of State⁴ for the making of the probation provision⁵, that is to say, any provision which the Secretary of State considers should be made:

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- 61. (a) for the probation purposes⁶;
- 62. (b) for enabling functions conferred by any enactment (whenever passed or made) on providers of probation services⁷, or on officers of a provider of probation services⁸, to be performed⁹; or
- 63. (c) for the performance of any function of the Secretary of State under any enactment (whenever passed or made) which is expressed to be a relevant function¹⁰ for this purpose¹¹; and

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2487 (2) the making and performance by the trust of contracts with another probation trust or any other person which provide for the carrying out by the trust of activities which contribute to the achievement of any of the probation purposes¹².

In addition to these purposes, a trust's purposes may also include:

2488 (i) the making or performance by the trust of contracts with the Secretary of State for the carrying out by the trust of activities anywhere in the world which are to be carried out in connection with persons who are or have been subject to proceedings in service courts and correspond to activities which, if carried out in connection with persons charged with or convicted of offences, would contribute to the achievement of any of the probation purposes¹³; and

2489 (ii) any other purpose specified for these purposes by regulations made by the Secretary of State¹⁴.

1 At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733.

2 Offender Management Act 2007 s 5(1)(a): the Secretary of State may also by order alter the name or purposes of, or dissolve, a probation trust: s 5(1)(b), (c). As to the establishment and constitution of probation trusts see further s 5(6), Sch 1. A purpose specified for a probation trust under s 5(1)(a) may be expressed in more specific terms than those used in s 5(2) or (3)(a) or (b) (see the text and note 13 and notes 5, 12) or in regulations under s 5(3)(c) (see the text and note 14): s 5(4).

At the date at which this volume states the law the Offender Management Act 2007 Pt 1 (ss 1-15), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by the Secretary of State, has been brought into force, replacing the corresponding provisions of the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10) (provision of probation services by local probation boards: see PARA 737 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

3 As to these see PARA 733.

4 le under the Offender Management Act 2007 s 3(2): see PARA 741. A purpose specified under these provisions which relates to the making or performance of contracts includes the carrying out of any activities relating to a contract of a relevant kind (including activities taking place before it is made or after it is terminated): s 5(5).

5 Offender Management Act 2007 (Establishment of Probation Trusts) Order 2008, SI 2008/598, art 3(a); Offender Management Act 2007 (Establishment of Probation Trusts) Order 2009, SI 2009/504, art 3(a). This purpose of a trust's establishment is compulsory: Offender Management Act 2007 s 5(2).

6 Offender Management Act 2007 s 2(1)(a). As to the purposes of the probation service see PARA 734.

7 'Provider of probation services' means:

1090 (1) a person with whom the Secretary of State has made arrangements that are in force under s 3(2) (see PARA 741) (s 3(6)(a)); or

1091 (2) the Secretary of State (in relation to probation provision which is the subject of arrangements that are in force under s 3(5)) (see PARA 743) (s 3(6)(b)).

8 In the Offender Management Act 2007 Pt 1 'officer of a provider of probation services' means an individual who is for the time being authorised (s 9(1)); and an individual may be authorised to act as an officer of a particular provider of probation services (the 'relevant provider') by the Secretary of State (s 9(2)(a)) or (unless the relevant provider is the Secretary of State) a provider of probation services (whether the relevant provider or any other provider) who is authorised to do so by the Secretary of State (s 9(2)(b), (3)). 'Officer', in relation to a particular provider of probation services, means a person so authorised to act as an officer of that provider: s 9(1).

9 Offender Management Act 2007 s 2(1)(b).

10 le a function to which the Offender Management Act 2007 s 3(1) applies: s 3(1)(c).

11 Offender Management Act 2007 s 2(1)(c).

12 Offender Management Act 2007 (Establishment of Probation Trusts) Order 2008, SI 2008/598, art 3(b); Offender Management Act 2007 (Establishment of Probation Trusts) Order 2009, SI 2009/504, art 3(b). This purpose of a trust's establishment is optional: Offender Management Act 2007 s 5(3)(a).

13 Offender Management Act 2007 s 5(3)(b). At the date at which this volume states the law this purpose had not been specified for any of the probation trusts so far established, and provision in connection with persons who are or have been subject to proceedings in service courts continues to be made by local probation boards under the Criminal Justice and Court Services Act 2000 s 5A: see PARA 736.

14 Offender Management Act 2007 s 5(3)(c). At the date at which this volume states the law no such further purpose had been specified for any of the probation trusts so far established.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iii) Provision of Probation Services by Probation Trusts and other Public Bodies/741. Arrangements for the making of probation provision.

741. Arrangements for the making of probation provision.

Under the new system for the provision of probation services¹ it is the function of the Secretary of State to ensure that sufficient probation provision² is made throughout England and Wales³, and where such provision is to be made:

- 2490 (1) for the probation purposes⁴; or
- 2491 (2) for enabling functions conferred by any enactment on providers of probation services⁵, or on officers of a provider of probation services, to be performed⁶,

he must discharge this function by making and carrying out contractual or other arrangements with a probation trust⁷ or another public body⁸.

Where such provision is to be made for the performance of a statutory function of the Secretary of State which is expressed to be a relevant function for this purpose⁹, the Secretary of State must discharge his function of ensuring that sufficient probation provision is made¹⁰ by making and carrying out contractual or other arrangements with a probation trust, another public body or any other person¹¹.

1 At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733.

2 As to the meaning of 'probation provision' see PARA 740.

3 Offender Management Act 2007 ss 2(1), 3(1). The Secretary of State must have regard to the aims of the probation service (see s 2(4); and PARA 735) in the exercise of his functions under these provisions so far as they may be exercised for any of the probation purposes (s 2(3)): he is not, however, required to take any action in relation to the making of probation provision if it appears to him that appropriate provision is being or will be made by any person acting otherwise than in pursuance of arrangements under s 3 (s 2(5)). The Secretary of State must have regard to the annual plan published under s 8(2) (see PARA 744) for any year in discharging his functions under s 2(1) during that year: s 8(3)(a). 'Year' means a period of 12 months ending with 31 March: s 8(7).

At the date at which this volume states the law the Offender Management Act 2007 Pt 1 (ss 1-15), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by the Secretary of State, has been brought into force, replacing the corresponding provisions of the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10) (provision of probation services by local probation boards: see PARA 737 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

4 Ie under the Offender Management Act 2007 s 2(1)(a): see PARA 740. As to the purposes of the probation service see PARA 734.

5 As to the meaning of 'provider of probation services' see PARA 740 note 7.

6 Ie under the Offender Management Act 2007 s 2(1)(b): see PARA 740.

7 Ie arrangements under the Offender Management Act 2007 s 3: see PARA 742. As to the establishment and purposes of probation trusts see PARA 740. Arrangements made by the Secretary of State under s 3(2) with a probation trust must, and arrangements so made by the Secretary of State with a person other than a probation

trust may if the Secretary of State thinks fit, require the trust or that person to publish an annual plan for each year in which it expects to carry out any specified activities (ie activities of a description specified in those arrangements for this purpose): s 8(4)-(6). 'Annual plan' means a plan setting out the way in which the probation trust or other person (as the case may be) proposes to carry out any specified activities during the year to which the plan relates: s 8(6).

8 Offender Management Act 2007 ss 2(2), 3(2), 4. As to the establishment and purposes of probation trusts see PARA 740. Section 4, which provides that contractual or other arrangements for the making of probation provision of the type referred to in heads (1) and (2) in the text may be made only with a probation trust or another public body, may be repealed by order of the Secretary of State (s 15(1)), and such power of repeal includes power to provide for s 4 to cease to have effect for such purposes as may be specified in the order (s 15(2)). At the date at which this volume states the law no such order had been made.

The Secretary of State must have regard to the annual plan published under s 8(2) (see PARA 744) for any year in discharging his functions under s 2(2) during that year (s 8(3)(a)), and in carrying out his functions under these provisions in relation to arrangements under s 3(2) with another person (the 'provider'), must have regard to the need to take reasonable steps to avoid (so far as practicable) the risk that the provision, in pursuance of the arrangements, of assistance to a court or to the Parole Board for England and Wales, and the carrying out, in pursuance of the arrangements, of any other activities, might be adversely affected by any potential conflict between the provider's obligations in relation to those activities and the financial interests of the provider: s 3(7). In exercising his powers under s 3(2) and s 3(5) (see PARA 743) the Secretary of State must also have regard to the need to secure, so far as practicable, that guidelines published under s 10 (see PARA 744) have the same effect in relation to every provider of probation services whose officers perform work to which they relate (s 10(4)), and in exercising his powers under s 3(2), must have regard to the need to secure, so far as practicable, that the arrangements in force from time to time provide for the national standards to have the same effect in relation to every provider of probation services carrying out the activities to which the standards apply (s 7(3)). As to the publication of national standards see s 7(1); and PARA 744.

9 Ie under the Offender Management Act 2007 s 2(1)(c): see PARA 740.

10 Ie under the Offender Management Act 2007 s 2(1): see the text and notes 1-3.

11 Offender Management Act 2007 s 3(2). See also notes 7, 8. The Secretary of State may make provision for the performance of any function to which s 2(1)(c) (see PARA 740) applies by making arrangements under s3(2) providing for the delegation of that function to the other person: s 3(4).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iii) Provision of Probation Services by Probation Trusts and other Public Bodies/742. Activities authorised pursuant to arrangements.

742. Activities authorised pursuant to arrangements.

Arrangements for the making of probation provision¹ may in particular authorise or require the person with whom the Secretary of State is making the arrangements:

- 2492 (1) to co-operate with other providers of probation services² or persons who are concerned with the prevention or reduction of crime or with giving assistance to the victims of crime³;
- 2493 (2) to authorise individuals⁴ to act as officers of a provider of probation services⁵; or
- 2494 (3) to make contractual or other arrangements with third parties for purposes connected with the probation provision to be made⁶.

¹ See under the Offender Management Act 2007 s 3(2): see PARA 741. As to the meaning of 'probation provision' see PARA 740.

² As to the meaning of 'provider of probation services' see PARA 740 note 7.

³ Offender Management Act 2007 s 3(3)(a). At the date at which this volume states the law the Offender Management Act 2007 Pt 1 (ss 1-15), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by the Secretary of State, has been brought into force, replacing the corresponding provisions of the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10) (provision of probation services by local probation boards: see PARA 737 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

⁴ See under the Offender Management Act 2007 s 9(2): see PARA 740 note 8.

⁵ Offender Management Act 2007 s 3(3)(b).

⁶ Offender Management Act 2007 s 3(3)(c). Such contractual or other arrangements include in particular:

- 1092 (1) for provision to be made, or for activities to be carried out, by third parties on behalf of that other person (s 3(3)(c)(i)); or
- 1093 (2) for individuals who are not members of that other person's staff to act as officers of a provider of probation services (s 3(3)(c)(ii)).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iii) Provision of Probation Services by Probation Trusts and other Public Bodies/743. Making of probation provision by the Secretary of State.

743. Making of probation provision by the Secretary of State.

If instead of making arrangements¹ for the making of probation provision² by probation trusts³, other public bodies or other persons, the Secretary of State considers it appropriate to make any probation provision himself, he must make arrangements for the making of that probation provision⁴.

1 le under the Offender Management Act 2007 s 3(2): see PARA 741.

2 As to the meaning of 'probation provision' see PARA 740.

3 As to the establishment and purposes of probation trusts see PARA 740.

4 Offender Management Act 2007 s 3(5). For the avoidance of doubt the members of staff through whom the Secretary of State may act in making and carrying out such arrangements include prison officers or other persons employed at a prison: s 3(5). The Secretary of State must have regard to the annual plan published under s 8(2) (see PARA 744) for any year in making or carrying out arrangements under s 3(5) for that year: s 8(3)(b). As to the meaning of 'year' see PARA 741 note 3. See also ss 3(7), 10(4); and PARA 741 note 8.

At the date at which this volume states the law the Offender Management Act 2007 Pt 1 (ss 1-15), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by the Secretary of State, has been brought into force, replacing the corresponding provisions of the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10) (provision of probation services by local probation boards: see PARA 737 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iii) Provision of Probation Services by Probation Trusts and other Public Bodies/744. Supplementary powers and duties of the Secretary of State.

744. Supplementary powers and duties of the Secretary of State.

In relation to the areas in which the new system for the provision of probation services is in effect¹ the Secretary of State:

- 2495 (1) may make payments² to a probation trust³ or towards expenditure incurred by any other person for any purpose falling within the probation purposes⁴;
- 2496 (2) may publish guidelines about any qualifications, experience or training required to perform the work of an officer of a provider of probation services⁵, and must publish such guidelines in relation to work involving the supervision of offenders and other work requiring direct contact with offenders (including offenders held in custody)⁶;
- 2497 (3) must at least once in every year⁷ consult the Welsh Ministers⁸, and such other persons as he thinks fit, about the provision that should be made for the purposes of the probation provision⁹ for the following year¹⁰;
- 2498 (4) must before the end of each year publish an annual plan for the following year which sets out the way in which he proposes to discharge his functions relating to the making of probation provision¹¹ during that year and carry out any arrangements which he expects to be in force¹² for the carrying out of such provision himself for that year¹³; and
- 2499 (5) must continue to publish national standards for the management of offenders¹⁴.

1 At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733.

2 Ie other than payments falling to be made in pursuance of arrangements under the Offender Management Act 2007 s 3(2) (see PARA 741): s 6(1). Payments under s 6 may be made on conditions (which may require repayment in specified circumstances): s 6(2). At the date at which this volume states the law the Offender Management Act 2007 Pt 1 (ss 1-15), to the extent that it makes substantive provision for the making of arrangements for the provision of probation services by the Secretary of State, has been brought into force, replacing the corresponding provisions of the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10) (provision of probation services by local probation boards: see PARA 737 et seq), so far as relating to the provision of probation services in the probation areas referred to in PARA 733.

3 As to the establishment and purposes of probation trusts see PARA 740.

4 Offender Management Act 2007 s 6(1). As to the purposes of the probation service see PARA 734.

5 As to the meaning of 'provider of probation services' see PARA 740 note 7.

6 Offender Management Act 2007 s 10(1), (2). Guidelines under s 10 may make different provision for different purposes: s 10(3).

7 As to the meaning of 'year' see PARA 741 note 3.

8 As to the Welsh Ministers and the Welsh Assembly Government see the Government of Wales Act 2006 Pt 2 (ss 45-92); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 Ie the purposes mentioned in the Offender Management Act 2007 s 2(1): see PARAS 740, 741.

- 10 Offender Management Act 2007 s 8(1).
- 11 le functions under the Offender Management Act 2007 s 2(1), (2): see PARAS 740, 741.
- 12 le under the Offender Management Act 2007 s 3(5): see PARA 743.
- 13 Offender Management Act 2007 s 8(2). Regard must be had to this plan in the carrying out of the Secretary of State's functions: see s 8(3); and PARAS 741, 743.
- 14 Offender Management Act 2007 s 7(1). The national standards may in particular include standards relating to the management of offenders held in custody: s 7(2).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/A. POWERS OF SECRETARY OF STATE/745. Approval of premises by the Secretary of State.

(iv) Approval of Premises for Probation Purposes

A. POWERS OF SECRETARY OF STATE

745. Approval of premises by the Secretary of State.

The Secretary of State may approve premises in which accommodation is provided for persons granted bail in criminal proceedings¹ or for or in connection with the supervision or rehabilitation of persons convicted of offences², and may make payments in connection with the operation of approved premises or constructing, enlarging or improving premises, if they are approved premises or the works are being carried out with a view to the premises becoming approved premises, to any person who incurs expenditure on the activities in question³.

The power of the Secretary of State to approve premises under these provisions applies in all circumstances regardless of whether responsibility for the provision of probation services has been transferred⁴ from local probation boards⁵ to probation trusts and other public bodies⁶, although different provision is made in respect of the provision of premises by different bodies⁷.

1 Ie within the meaning of the Bail Act 1976: see s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1166.

2 Offender Management Act 2007 s 13(1). 'Approved premises' means premises which are for the time being approved (s 13(1)), and references in any Act or subordinate legislation (within the meaning of the Interpretation Act 1978) to an approved bail hostel or an approved probation hostel are to be read as a reference to approved premises (s 13(6)).

3 Offender Management Act 2007 s 13(3). Such payments may be made on conditions (including conditions requiring repayment in specified circumstances) (s 13(4)), and the power to make those payments is without prejudice to the powers of the Secretary of State under ss 2-6 (see PARAS 735-744) (s 13(5)).

4 As to this transfer see PARA 733.

5 Ie under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10): see PARAS 737-739.

6 Ie under the Offender Management Act 2007 Pt 1 (ss 1-15): see PARAS 740-744.

7 See the Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 3 (made under the Offender Management Act 2007 s 13(2), under which the Secretary of State may make regulations for the regulation, management and inspection of approved premises); and PARAS 746-754.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/B. REQUIREMENTS APPLICABLE TO ALL APPROVED PREMISES/746. Residence conditions.

B. REQUIREMENTS APPLICABLE TO ALL APPROVED PREMISES

746. Residence conditions.

A probation trust¹, local probation board² or other body³ must not allow any person to become a resident⁴ of approved premises⁵ under its management or, where that person is a resident, allow them to continue to reside there, unless:

- 2500 (1) they are on bail in criminal proceedings⁶;
- 2501 (2) they are serving a community sentence⁷;
- 2502 (3) they are on licence, or are subject⁸ to supervision⁹; or
- 2503 (4) the chief officer of the relevant local board¹⁰, someone acting on their behalf, the chief executive of the relevant probation trust¹¹, someone acting on their behalf, or the Secretary of State considers that:

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- 64. (a) residence at the approved premises is necessary for the protection of the public¹²; or
- 65. (b) the person ought to receive supervision or treatment and that residence at the approved premises is necessary in order to enable them to receive it¹³.

.41

1 'Probation trust' means a trust established in accordance with the Offender Management Act 2007 s 5 (see PARA 740) that provides approved premises; and 'approved premises' means premises approved under the Offender Management Act 2007 s 13: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2. As to the provision of probation services by probation trusts see the Offender Management Act 2007 Pt 1 (ss 1-15); and PARAS 740-744.

2 'Local probation board' means a board constituted under the Criminal Justice and Court Services Act 2000 s 4 (see PARA 737) that provides approved premises: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2. As to the provision of probation services by local probation boards see the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10); and PARAS 737-739.

3 'Other body' means a body, other than a local probation board and a probation trust, which provides approved premises: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2.

4 'Resident', in relation to approved premises, means a person who lives in the approved premises otherwise than in the course of their employment, and 'reside' is construed accordingly: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2.

5 As to the approval of premises by the Secretary of State see PARA 745.

6 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(1)(a). For this purpose 'bail in criminal proceedings' means bail in criminal proceedings within the meaning of the Bail Act 1976: see s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1166.

7 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(1)(b). As to the meaning of 'community sentence' see the Criminal Justice Act 2003 s 147; and PARA 163 (definition applied by the Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2).

8 le by virtue of the Criminal Justice Act 1991 s 65: see **PRISONS** vol 36(2) (Reissue) PARA 628.

9 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(1)(c).

10 'Relevant local board' means, where applicable, the local probation board in whose area the approved premises are situated: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2.

11 'Relevant probation trust' means, where applicable, a probation trust operating in the area in which the approved premises are situated: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2.

12 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(1)(d).

13 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(1)(e).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/B. REQUIREMENTS APPLICABLE TO ALL APPROVED PREMISES/747. Number and age of residents.

747. Number and age of residents.

Except with the prior consent of the Secretary of State¹:

- 2504 (1) the number of residents² at any approved premises³ at any time must not exceed such number as may be approved in respect of those premises by the Secretary of State⁴; and
- 2505 (2) a probation trust⁵, local probation board⁶ or other body⁷ must not allow any person to be present on approved premises under its management if they are outside such age limits as may be approved by the Secretary of State in respect of the premises⁸.

1 As to the approval of premises by the Secretary of State see PARA 745.

2 As to the meaning of 'resident' see PARA 746 note 4.

3 As to the meaning of 'approved premises' see PARA 746 note 1. As to the approval of premises by the Secretary of State see PARA 745.

4 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(2).

5 As to the meaning of 'probation trust' see PARA 746 note 1.

6 As to the meaning of 'local probation board' see PARA 746 note 2.

7 As to the meaning of 'other body' see PARA 746 note 3.

8 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(3).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/B. REQUIREMENTS APPLICABLE TO ALL APPROVED PREMISES/748. Periods of leave for residents serving community sentences.

748. Periods of leave for residents serving community sentences.

A person residing¹ at approved premises² who is required to reside at the premises by any provision of a community sentence³ may, with the consent of the officer responsible for supervising the community sentence and the person in charge of the premises, leave the premises for a period of not more than five consecutive days⁴.

1 As to the meaning of 'reside' see PARA 746 note 4.

2 As to the meaning of 'approved premises' see PARA 746 note 1. As to the approval of premises by the Secretary of State see PARA 745.

3 As to the meaning of 'community sentence' see PARA 746 note 7.

4 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 6.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES/749. Management and control.

C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES

749. Management and control.

Each local probation board¹ and other body² must:

- 2506 (1) ensure that the approved premises³ under its management are maintained in a condition which is satisfactory having regard to their purpose⁴;
- 2507 (2) ensure that the premises are run in a manner which promotes protection of the public and the reduction of re-offending⁵;
- 2508 (3) ensure that at least two members of staff are present on the premises at all times⁶;
- 2509 (4) exercise effective control over all expenditure incurred in connection with the approved premises under its management and prepare such statements of accounts as the Secretary of State may require⁷;
- 2510 (5) prepare house rules⁸ for the approved premises, governing the conduct of residents⁹, which must comply with any requirements of the Secretary of State as to the content of such rules¹⁰; and
- 2511 (6) bring the house rules to the attention of every resident of the approved premises and take all appropriate measures to ensure that they are complied with by all such residents¹¹.

The local probation board or other body is responsible for the appointment, training, discipline and dismissal of the staff of the approved premises under its management¹².

All approved premises provided by other bodies must be managed by a management committee¹³ which must cooperate with local boards and trusts in its decision-making¹⁴.

1 As to the meaning of 'local probation board' see PARA 746 note 2.

2 As to the meaning of 'other body' see PARA 746 note 3.

3 As to the meaning of 'approved premises' see PARA 746 note 1. As to the approval of premises by the Secretary of State see PARA 745.

4 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(a)(i).

5 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(a)(ii).

6 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(a)(iii).

7 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(b).

8 'House rules' means rules for approved premises prepared in accordance with the Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(c): reg 2.

9 As to the meaning of 'resident' see PARA 746 note 4.

- 10 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(d).
- 11 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(1)(e).
- 12 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 7(2).
- 13 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 15. Provision is made for the constitution of management committees: see reg 16.
- 14 See the Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 17.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES/750. Admissions.

750. Admissions.

Each local probation board¹ and other body² must adopt an admissions policy³ for approved premises⁴ under its management, which must comply with the residence conditions⁵ and any requirements of the Secretary of State as to the admissions policies of approved premises⁶, and must notify the courts for the area in which the approved premises are situated of the terms of such policy⁷. The local probation board or other body must not admit as a resident⁸ of approved premises under its management any person who does not fall within one of the categories of person specified as suitable in the admissions policy⁹.

1 As to the meaning of 'local probation board' see PARA 746 note 2.

2 As to the meaning of 'other body' see PARA 746 note 3.

3 'Admissions policy', in relation to approved premises, means a policy which specifies the categories of person considered suitable to reside at the premises: Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 2.

4 As to the meaning of 'approved premises' see PARA 746 note 1. As to the approval of premises by the Secretary of State see PARA 745.

5 I.e the Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 5(1): see PARA 746.

6 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 8(1), (2).

7 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 8(3).

8 As to the meaning of 'resident' see PARA 746 note 4.

9 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 8(4). This is subject to reg 5: see PARAS 746-747.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES/751. Residence requirements.

751. Residence requirements.

A 'residence requirement' is a requirement to reside¹ at approved premises² provided by a local probation board³ or other body⁴ by virtue of:

- 2512 (1) a term of any court order⁵;
- 2513 (2) any condition of a licence⁶; or
- 2514 (3) any supervision requirement⁷.

Where a person is subject to a residence requirement the local probation board or other body, as applicable, must not require that person to end their residence before the expiry of the residence requirement unless:

- 2515 (a) an emergency has arisen⁸; or
- 2516 (b) the resident has broken the house rules⁹ and that breach has been reported to the applicable person¹⁰.

Where a local probation board or other body intends to require a resident who is subject to a residence requirement to end their residence at the approved premises under its management, it must give reasonable notice of that intention to any officer of a local probation board, or where appropriate any officer of a probation trust¹¹, who is responsible for the resident and, in the case of a resident who is on bail, the court which granted bail¹².

1 As to the meaning of 'reside' see PARA 746 note 4.

2 As to the meaning of 'approved premises' see PARA 746 note 1. As to the approval of premises by the Secretary of State see PARA 745.

3 As to the meaning of 'local probation board' see PARA 746 note 2.

4 As to the meaning of 'other body' see PARA 746 note 3.

5 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 9(1)(a).

6 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 9(1)(b).

7 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 9(1)(c). For this purpose a 'supervision requirement' is a requirement imposed by virtue of the Criminal Justice Act 1991 s 65: see **PRISONS** vol 36(2) (Reissue) PARA 628.

8 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 9(2)(a).

9 As to the meaning of 'house rules' see PARA 749 note 8.

10 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 9(2)(b). If the residence requirement is imposed by virtue of a term of a court order (ie in a case to which reg 9(1)(a) applies) the breach must be reported to the court which made the order, and if it is imposed by virtue of any condition of a licence (ie in a case to which reg 9(1)(b) applies) the breach must be reported to the Secretary of State: reg 9(2)(b).

- 11 As to the meaning of 'probation trust' see PARA 746 note 1.
- 12 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 9(3).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES/752. Absconding.

752. Absconding.

Where a resident¹ absconds from approved premises² provided by a local probation board³ or other body⁴ the person in charge of the premises must immediately notify:

- 2517 (1) in the case of a resident required by or under any provision of a community sentence⁵ to reside at the approved premises, the person responsible for supervising that sentence⁶;
- 2518 (2) in the case of a resident required by virtue of any condition of a licence or any supervision requirement⁷ to reside at the approved premises, the person responsible for supervising that licence or notice of supervision⁸; or
- 2519 (3) in the case of a resident who is on bail and is required as a condition of that bail to reside at the approved premises, the court which granted bail and the police⁹.

1 As to the meaning of 'resident' see PARA 746 note 4.

2 As to the meaning of 'approved premises' see PARA 746 note 1. As to the approval of premises by the Secretary of State see PARA 745.

3 As to the meaning of 'local probation board' see PARA 746 note 2.

4 As to the meaning of 'other body' see PARA 746 note 3.

5 As to the meaning of 'community sentence' see PARA 746 note 7.

6 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 10(a).

7 I.e. a requirement imposed by virtue of the Criminal Justice Act 1991 s 65: see **PRISONS** vol 36(2) (Reissue) PARA 628.

8 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 10(b).

9 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 10(c).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES/753. Medical care and advice.

753. Medical care and advice.

Each local probation board¹ and other body² must ensure that facilities are available for the provision to residents³ of any necessary medical and dental treatment⁴, and may appoint a medical officer to assist it in discharging these functions⁵.

1 As to the meaning of 'local probation board' see PARA 746 note 2.

2 As to the meaning of 'other body' see PARA 746 note 3.

3 As to the meaning of 'resident' see PARA 746 note 4.

4 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 12(1). As to the approval of premises by the Secretary of State see PARA 745.

5 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 12(2).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

Halsbury's Laws of England/SENTENCING AND DISPOSITION OF OFFENDERS (VOLUME 92 (2010) 5TH EDITION)/11. REHABILITATION AND OFFENDER MANAGEMENT/(3) PROVISION OF PROBATION SERVICES/(iv) Approval of Premises for Probation Purposes/C. REQUIREMENTS APPLICABLE TO PREMISES MANAGED BY LOCAL PROBATION BOARDS AND OTHER BODIES/754. Expenses, administration and inspection.

754. Expenses, administration and inspection.

Each local probation board¹ and other body² must charge residents³, in respect of the expenses of the resident's maintenance, such sums as the Secretary of State may determine⁴, and must arrange for the keeping of all registers and records required by the Secretary of State and cause to be sent to the Secretary of State such returns, statements and other information as may be required by the Secretary of State from time to time⁵.

Each local probation board and other body must arrange for the approved premises⁶ under its management to be open at all times to inspection by or on behalf of the Secretary of State and must, in connection with any such inspection, make available for examination the books and records of the premises⁷.

1 As to the meaning of 'local probation board' see PARA 746 note 2.

2 As to the meaning of 'other body' see PARA 746 note 3.

3 As to the meaning of 'resident' see PARA 746 note 4.

4 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 11. As to the approval of premises by the Secretary of State see PARA 745.

5 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 13.

6 As to the meaning of 'approved premises' see PARA 746 note 1.

7 Offender Management Act 2007 (Approved Premises) Regulations 2008, SI 2008/1263, reg 14.

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

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(v) Inspections of Probation Services

755. The inspectorate.

There is an inspectorate and chief inspector of probation in England and Wales¹. The principal function of the chief inspector is to secure that provision made in pursuance of arrangements for ensuring the provision of probation services² is inspected by a member of the inspectorate³ in accordance with criteria specified by the Secretary of State⁴. The Secretary of State may also give directions, in connection with the probation purposes⁵, conferring further functions on the chief inspector and the other members of the inspectorate⁶.

¹ The Her Majesty's Inspectorate of Probation for England and Wales and its chief inspector, which were originally established under the Probation Service Act 1993 s 23 (repealed) and are continued in being by the Criminal Justice and Court Services Act 2000 s 6(1) (amended by the Offender Management Act 2007 s 12(2)(a), Sch 5 Pt 1). References to the chief inspector are to Her Majesty's Chief Inspector of the Probation for England and Wales; and references to the members of the inspectorate are to the chief inspector and the other members of Her Majesty's Inspectorate of Probation for England and Wales: Criminal Justice and Court Services Act 2000 s 6(4) (amended by the Offender Management Act 2007 s 12(2)(b)).

The power to appoint a person to be chief inspector or one of the other members of the inspectorate is exercisable by the Secretary of State, who may also determine the number of members of the inspectorate and the remuneration and allowances or other amounts to be paid by him in respect of the members of the inspectorate: Criminal Justice and Court Services Act 2000 s 6(2), (3).

² At the date at which this volume states the law responsibility for the provision of probation services is being gradually transferred, by area, from local probation boards (under the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10)) to probation trusts and other public bodies (under the Offender Management Act 2007 Pt 1 (ss 1-15)): see PARA 733. Thus the reference in the text to provision made in pursuance of arrangements for ensuring the provision of probation services is a reference either to arrangements made by each local probation board under the Criminal Justice and Court Services Act 2000 s 5 (see PARA 738) or to arrangements made by the Secretary of State under the Offender Management Act 2007 s 3 (see PARAS 741-743), depending on whether the transfer of responsibilities from local probation boards to probation trusts and other public bodies has taken effect in the area in question (as to which see PARA 733). As to the establishment of local probation boards and the existing system for the provision of probation services thereby see the Criminal Justice and Court Services Act 2000 Pt 1 Ch 1 (ss 1-10); and PARA 737 et seq. As to the establishment and purposes of probation trusts and the new system for the provision of probation services by probation trusts and other public bodies see the Offender Management Act 2007 Pt 1 (ss 1-15); and PARA 740 et seq.

³ Criminal Justice and Court Services Act 2000 s 7(1) (amended, in relation to the areas specified in PARA 733, by the Offender Management Act 2007 s 12(3)(a)). A report of such an inspection must be sent to the Secretary of State (Criminal Justice and Court Services Act 2000 s 7(3)): the Secretary of State may give directions as to the information to be given in the report and the form in which it is to be given, and the time by which the report is to be given (s 7(4)), and must lay a copy of the report before each House of Parliament (s 7(5)).

⁴ See the Criminal Justice and Court Services Act 2000 s 7(2) (empowering the Secretary of State to direct the members of the inspectorate to assess the provision made by reference to criteria specified in directions).

⁵ The purposes set out in the Criminal Justice and Court Services Act 2000 s 1 or, as the case may be (see note 2) the Offender Management Act 2007 s 1: see PARA 734.

⁶ Criminal Justice and Court Services Act 2000 s 7(6) (amended, in relation to the areas specified in PARA 733, by the Offender Management Act 2007 s 12(3)(b)).

UPDATE

733-755 Provision of Probation Services

The new arrangements for the provision of probation services under the Offender Management Act 2007 Pt 1 (ss 1-15), so far as they are not already in force, are brought into force on 1 April 2010: SI 2010/191.

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756. Delegation of functions.

A member of the inspectorate¹ may delegate any of his functions (to such extent as he may determine) to another public authority², although if a member of the inspectorate so delegates the carrying out of an inspection it is nevertheless to be regarded³ as carried out by that member⁴.

1 As to the inspectorate and its membership and functions see PARA 755.

2 Criminal Justice and Court Services Act 2000 Sch 1A para 1(1) (Sch 1A added by the Police and Justice Act 2006 s 31(2)). 'Public authority' includes any person certain of whose functions are functions of a public nature: Criminal Justice and Court Services Act 2000 Sch 1A para 1(3) (as so added).

3 Ie for the purposes of the Criminal Justice and Court Services Act 2000 s 7 (see PARA 755) and Sch 1A (see PARAS 757-760).

4 Criminal Justice and Court Services Act 2000 Sch 1A para 1(2) (as added: see note 1).

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757. Inspection programmes and frameworks.

The chief inspector¹ must from time to time, or at such times as the Secretary of State may specify by order², prepare an inspection programme³ and an inspection framework⁴ after consulting the Secretary of State and⁵:

- 2520 (1) Her Majesty's Chief Inspector of Prisons⁶;
- 2521 (2) Her Majesty's Chief Inspector of Constabulary⁷;
- 2522 (3) Her Majesty's Chief Inspector of the Crown Prosecution Service⁸;
- 2523 (4) Her Majesty's Chief Inspector of Court Administration⁹;
- 2524 (5) Her Majesty's Chief Inspector of Education, Children's Services and Skills¹⁰;
- 2525 (6) the Audit Commission for Local Government and the National Health Service in England¹¹;
- 2526 (7) the Auditor General for Wales¹²;
- 2527 (8) the Care Quality Commission¹³; and
- 2528 (9) any other person or body specified by an order made by the Secretary of State¹⁴,

and must send to each of those persons or bodies a copy of each programme or framework once it is prepared¹⁵. Nothing in any inspection programme or framework is to be read as preventing the inspectorate from making visits without notice¹⁶.

1 As to references to the chief inspector see PARA 755 note 1.

2 At the date at which this volume states the law no such orders had been made.

3 I.e a document setting out what inspections the chief inspector proposes to carry out: Criminal Justice and Court Services Act 2000 Sch 1A para 2(1)(a) (Sch 1A added by the Police and Justice Act 2006 s 31(2)). The Secretary of State may by order specify the form that inspection programmes or inspection frameworks are to take (Criminal Justice and Court Services Act 2000 Sch 1A para 2(4) (as so added)): at the date at which this volume states the law no such order had been made.

4 I.e a document setting out the manner in which the chief inspector proposes to carry out his functions of inspecting and reporting: Criminal Justice and Court Services Act 2000 Sch 1A para 2(1)(b) (as added: see note 3). See note 3.

5 Subject to any agreement made between the chief inspector and the specified person or body to waive the requirement in such cases or circumstances as may be specified in the agreement: Criminal Justice and Court Services Act 2000 Sch 1A para 2(3) (as added: see note 3).

6 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(a) (as added: see note 3). As to Her Majesty's Chief Inspector of Prisons see **PRISONS** vol 36(2) (Reissue) PARA 508.

7 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(b) (as added: see note 3). As to Her Majesty's Chief Inspector of Constabulary see **POLICE** vol 36(1) (2007 Reissue) PARA 206.

8 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(c) (as added: see note 3). As to Her Majesty's Chief Inspector of the Crown Prosecution Service see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1069.

9 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(d) (as added: see note 3). As to Her Majesty's Chief Inspector of Court Administration see **COURTS**.

10 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(e) (as added: see note 3). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **EDUCATION**.

11 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(h) (as added: see note 3). As to the Audit Commission see **LOCAL GOVERNMENT**.

12 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(i) (as added: see note 3). As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

13 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(g) (as added (see note 3); substituted by the Health and Social Care Act 2008 Sch 5 para 74). As to the Care Quality Commission see **SOCIAL SERVICES AND COMMUNITY CARE**.

14 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(j) (as added: see note 3). At the date at which this volume states the law no further persons or bodies had been specified.

15 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2) (as added: see note 3).

16 Criminal Justice and Court Services Act 2000 Sch 1A para 2(5) (as added: see note 3).

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758. Inspections by other organisations within inspectorate's remit.

The chief inspector¹ may, by notice or otherwise², instruct specified persons or bodies³ not to carry out, or not to carry out in a particular manner, a proposed inspection of:

- 2529 (1) a local probation board⁴;
- 2530 (2) an organisation or individual with whom a local probation board has made arrangements⁵, but only in relation to those arrangements⁶; or
- 2531 (3) a manager or other person working at approved premises⁷,

if he considers that the proposed inspection would impose an unreasonable burden on that organisation, or would do so if carried out in that particular manner⁸. The persons or bodies referred to⁹ are:

- 2532 (a) Her Majesty's Chief Inspector of Prisons¹⁰;
- 2533 (b) Her Majesty's Chief Inspector of Education, Children's Services and Skills¹¹;
- 2534 (c) the Audit Commission for Local Government and the National Health Service in England¹²; and
- 2535 (d) the Care Quality Commission¹³.

Where a notice is so given, the proposed inspection is not to be carried out, or (as the case may be) is not to be carried out in the manner mentioned in the notice¹⁴, although the Secretary of State, if satisfied that the proposed inspection would not impose an unreasonable burden on the organisation in question or would not do so if carried out in a particular manner, may give consent to the inspection being carried out, or being carried out in that manner¹⁵.

1 As to references to the chief inspector see PARA 755 note 1.

2 These provisions are subject to the Criminal Justice and Court Services Act 2000 Sch 1A para 3(7) (Sch 1A added by the Police and Justice Act 2006 s 31(2)), which provides that the Secretary of State may by order specify cases or circumstances in which a notice need not, or may not, be given under these provisions.

The Secretary of State may by order make provision supplementing that made by these provisions including in particular:

- 1094 (1) provision about the form of notices (Criminal Justice and Court Services Act 2000 Sch 1A para 3(10)(a) (as so added));
- 1095 (2) provision prescribing the period within which notices are to be given (Sch 1A para 3(10)(b) (as so added));
- 1096 (3) provision prescribing circumstances in which notices are, or are not, to be made public (Sch 1A para 3(10)(c) (as so added));
- 1097 (4) provision for revising or withdrawing notices (Sch 1A para 3(10)(d) (as so added)); and
- 1098 (5) provision for setting aside notices not validly given (Sch 1A para 3(10)(e) (as so added)).

At the date at which this volume states the law no such order had been made.

3 As to these see the text and notes 9-13.

4 Criminal Justice and Court Services Act 2000 Sch 1A para 3(1)(a) (as added: see note 2); Her Majesty's Inspectorate of the National Probation Service for England and Wales (Specified Organisations) Order 2007, SI 2007/1172, art 2(a). The reference is to a local probation board established under the Criminal Justice and Court Services Act 2000 s 4: see **PARA 737**.

The organisations listed in heads (1)-(3) in the text are specified for these purposes by order of the Secretary of State under the Criminal Justice and Court Services Act 2000 Sch 1A para 3(4) (as so added). An organisation may be so specified only if it exercises functions in relation to any matter falling within the scope of the duties of the inspectorate under s 7 (see **PARA 755**) (Sch 1A para 3(5) (as so added)), and may be so specified in relation to particular functions that it has (Sch 1A para 3(6) (as so added)). In the case of an organisation so specified, Sch 1A para 3(1)(a) is to be read as referring to an inspection that would involve inspecting the discharge of any of its functions in relation to which it is specified: Sch 1A para 3(6) (as so added).

5 le under the Criminal Justice and Court Services Act 2000 5: see **PARA 738**.

6 Her Majesty's Inspectorate of the National Probation Service for England and Wales (Specified Organisations) Order 2007, SI 2007/1172, art 2(b).

7 Her Majesty's Inspectorate of the National Probation Service for England and Wales (Specified Organisations) Order 2007, SI 2007/1172, art 2(c). As to the approval of premises see **PARAS 745-754**.

8 Criminal Justice and Court Services Act 2000 Sch 1A para 3(1)(b) (as added: see note 2).

9 The Secretary of State may by order amend the Criminal Justice and Court Services Act 2000 Sch 1A para 3(2) (see the text and notes 10-13): Sch 1A para 3(3) (as added: see note 2). At the date at which this volume states the law no such order had been made.

10 Criminal Justice and Court Services Act 2000 Sch 1A para 3(2)(a) (as added: see note 2). As to Her Majesty's Chief Inspector of Prisons see **PRISONS** vol 36(2) (Reissue) **PARA 508**.

11 Criminal Justice and Court Services Act 2000 Sch 1A para 3(2)(b) (as added: see note 2). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **EDUCATION**.

12 Criminal Justice and Court Services Act 2000 Sch 1A para 3(2)(e) (as added: see note 2). As to the Audit Commission see **LOCAL GOVERNMENT**.

13 Criminal Justice and Court Services Act 2000 Sch 1A para 3(2)(d) (as added (see note 2); substituted by the Health and Social Care Act 2008 Sch 5 para 74). As to the Care Quality Commission see **SOCIAL SERVICES AND COMMUNITY CARE**.

14 Criminal Justice and Court Services Act 2000 Sch 1A para 3(8) (as added: see note 2).

15 Criminal Justice and Court Services Act 2000 Sch 1A para 3(9) (as added: see note 2).

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759. Cooperation and assistance.

Where it is appropriate to do so for the efficient and effective discharge of its functions, the inspectorate may co-operate with:

- 2536 (1) Her Majesty's Chief Inspector of Prisons¹;
- 2537 (2) Her Majesty's Chief Inspector of Constabulary²;
- 2538 (3) Her Majesty's Chief Inspectorate of the Crown Prosecution Service³;
- 2539 (4) Her Majesty's Chief Inspector of Court Administration⁴;
- 2540 (5) Her Majesty's Chief Inspector of Education, Children's Services and Skills⁵;
- 2541 (6) the Audit Commission for Local Government and the National Health Service in England⁶;
- 2542 (7) the Auditor General for Wales⁷;
- 2543 (8) the Care Quality Commission⁸; and
- 2544 (9) any other person or body specified by an order made by the Secretary of State⁹.

The chief inspector¹⁰ may if he thinks it appropriate to do so provide assistance to any other public authority¹¹ for the purpose of the exercise by that authority of its functions¹².

1 Criminal Justice and Court Services Act 2000 Sch 1A para 4(a) (Sch 1A added by the Police and Justice Act 2006 s 31(2)). As to Her Majesty's Chief Inspector of Prisons see **PRISONS** vol 36(2) (Reissue) PARA 508.

2 Criminal Justice and Court Services Act 2000 Sch 1A para 4(b) (as added: see note 1). As to Her Majesty's Chief Inspector of Constabulary see **POLICE** vol 36(1) (2007 Reissue) PARA 206.

3 Criminal Justice and Court Services Act 2000 Sch 1A para 4(c) (as added: see note 1). As to Her Majesty's Chief Inspectorate of the Crown Prosecution Service see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1069.

4 Criminal Justice and Court Services Act 2000 Sch 1A para 4(d) (as added: see note 1). As to Her Majesty's Chief Inspector of Court Administration see **COURTS**.

5 Criminal Justice and Court Services Act 2000 Sch 1A para 4(e) (as added: see note 1). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **EDUCATION**.

6 Criminal Justice and Court Services Act 2000 Sch 1A para 4(h) (as added: see note 1). As to the Audit Commission see **LOCAL GOVERNMENT**.

7 Criminal Justice and Court Services Act 2000 Sch 1A para 4(i) (as added: see note 1). As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 Criminal Justice and Court Services Act 2000 Sch 1A para 4(g) (as added (see note 1); substituted by the Health and Social Care Act 2008 Sch 5 para 74). As to the Care Quality Commission see **SOCIAL SERVICES AND COMMUNITY CARE**.

9 Criminal Justice and Court Services Act 2000 Sch 1A para 4(j) (as added: see note 1). At the date at which this volume states the law no further persons or bodies had been specified.

10 As to references to the chief inspector see PARA 755 note 1.

11 As to the meaning of 'public authority' see PARA 756 note 2.

12 Criminal Justice and Court Services Act 2000 Sch 1A para 6(1) (as added: see note 1). Such assistance may be provided on such terms (including terms as to payment) as the chief inspector thinks fit: Sch 1A para 6(2) (as so added).

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760. Joint action and joint inspection programmes.

The inspectorate may act jointly with another public authority¹ where it is appropriate to do so for the efficient and effective discharge of the inspectorate's functions², and pursuant to this power the chief inspector³ must prepare a joint inspection programme⁴, acting jointly with:

- 2545 (1) Her Majesty's Chief Inspector of Prisons⁵;
- 2546 (2) Her Majesty's Chief Inspector of Constabulary⁶;
- 2547 (3) Her Majesty's Chief Inspector of the Crown Prosecution Service⁷; and
- 2548 (4) Her Majesty's Chief Inspector of Court Administration⁸.

Before preparing a joint inspection programme the chief inspector must consult the Secretary of State and⁹:

- 2549 (a) Her Majesty's Chief Inspector of Prisons¹⁰;
- 2550 (b) Her Majesty's Chief Inspector of Constabulary¹¹;
- 2551 (c) Her Majesty's Chief Inspector of the Crown Prosecution Service¹²;
- 2552 (d) Her Majesty's Chief Inspector of Court Administration¹³;
- 2553 (e) Her Majesty's Chief Inspector of Education, Children's Services and Skills¹⁴;
- 2554 (f) the Audit Commission for Local Government and the National Health Service in England¹⁵;
- 2555 (g) the Auditor General for Wales¹⁶;
- 2556 (h) the Care Quality Commission¹⁷; and
- 2557 (i) any other person or body specified by an order made by the Secretary of State¹⁸,

and must send to each of those persons or bodies a copy of each programme once it is prepared¹⁹. Nothing in any joint inspection programme is to be read as preventing the inspectorate from making visits without notice²⁰.

1 As to the meaning of 'public authority' see PARA 756 note 2.

2 Criminal Justice and Court Services Act 2000 Sch 1A para 5(1) (Sch 1A added by the Police and Justice Act 2006 s 31(2)).

3 As to references to the chief inspector see PARA 755 note 1.

4 Is a document setting out what inspections the inspectorate proposes to carry out in the exercise of the power conferred by the Criminal Justice and Court Services Act 2000 Sch 1A para 5(1) (see the text and notes 1-2) and what inspections the chief inspectors listed in heads (1)-(4) in the text (or their inspectorates) propose to carry out in the exercise of any corresponding powers conferred on them: Sch 1A para 5(2) (as added: see note 2). A joint inspection programme must be prepared from time to time or at such times as the Secretary of State, the Lord Chancellor and the Attorney General may jointly direct (Sch 1A para 5(4) (as so added)), and the Secretary of State, the Lord Chancellor and the Attorney General may by a joint direction specify the form that a joint inspection programme is to take (Sch 1A para 5(6) (as so added)).

5 Criminal Justice and Court Services Act 2000 Sch 1A para 5(3)(a) (as added: see note 2). As to Her Majesty's Chief Inspector of Prisons see **PRISONS** vol 36(2) (Reissue) PARA 508.

- 6 Criminal Justice and Court Services Act 2000 Sch 1A para 5(3)(b) (as added: see note 2). As to Her Majesty's Chief Inspector of Constabulary see **POLICE** vol 36(1) (2007 Reissue) PARA 206.
- 7 Criminal Justice and Court Services Act 2000 Sch 1A para 5(3)(c) (as added: see note 2). As to Her Majesty's Chief Inspectorate of the Crown Prosecution Service see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1069.
- 8 Criminal Justice and Court Services Act 2000 Sch 1A para 5(3)(d) (as added: see note 2). As to Her Majesty's Chief Inspector of Court Administration see **COURTS**.
- 9 Subject to any agreement made between the chief inspector and the specified person or body to waive the requirement in such cases or circumstances as may be specified in the agreement: Criminal Justice and Court Services Act 2000 Sch 1A paras 2(3), 5(5) (as added: see note 2).
- 10 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(a) (as added: see note 2).
- 11 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(b) (as added: see note 2).
- 12 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(c) (as added: see note 2).
- 13 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(d) (as added: see note 2).
- 14 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(e) (as added: see note 2). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see **EDUCATION**.
- 15 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(h) (as added: see note 2). As to the Audit Commission see **LOCAL GOVERNMENT**.
- 16 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(i) (as added: see note 2). As to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.
- 17 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(g) (as added (see note 2); substituted by the Health and Social Care Act 2008 Sch 5 para 74, Sch 15 Pt 1). As to the Care Quality Commission see **SOCIAL SERVICES AND COMMUNITY CARE**.
- 18 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2)(j) (as added: see note 2). At the date at which this volume states the law no further persons or bodies had been specified.
- 19 Criminal Justice and Court Services Act 2000 Sch 1A para 2(2) (as added: see note 2).
- 20 Criminal Justice and Court Services Act 2000 Sch 1A para 2(5) (as added: see note 2).